THE LOGIC OF ORDER

An Examination of the Sources of Puritan-Anglican Controversy and of Their Relation to Prevailing Legal Conceptions of Corporation in the Late 16th and Early 17th Century in England

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PREFACE

Two broad areas of concern lie behind the writing of this essay. In the first place, there is good reason to be disturbed by most of the recent (not to mention the earlier) historical treatments of Max Weber's famous thesis in the Protestant Ethic and the Spirit of Capitalism. The evaluations of both 'secular' and 'church' historians are generally opposed to Weber's conclusions that there was a positive affinity between the rise of "rational bourgeois capitalism" in England and Calvinist-Puritanism. There have been, of course, significant defenses and elaborations made of Weber's thesis by scholars like Talcott Parsons, B.N. Nelson and R.K. Merton. However, these men have not attempted to retrace and rejustify the specific steps Weber himself took in arguing his case, but to introduce broader theoretical and historical material that would ~~seem~~ to confirm Weber's original argument.

On the other hand, the recent studies that purport to examine precisely the same historical data that Weber treated--that is, the theology of Calvin and the Puritans in the context of 17th-century English society--come to conclusions that, in one way or another, contradict Weber. Current examples are easy to find: Kurt Samuelsson's Religion and Economic Action (appeared in English in 1961), C.H. and Katherine Georges' Protestant Mind of the English Reformation (1961), Winthrop Hudson's "Weber Thesis Reexamined" (1961), Christopher Hill's "Protestantism and the Rise of Capitalism" (1961). For instance, Samuelsson is serenely confident that he has once and for all obliterated Weber's thesis, a thesis he considers to be "pure nonsense." Hudson and the Georges seem equally satisfied that we need no longer trouble ourselves over connections between religion and 17th-century England. Hill is not quite certain of that, but his arguments are hardly more in accord with Weber.

These are not convincing studies, and one is appalled to find that such a consensus of recent historical opinion has so facilely gained the day against Weber. It is in the interest of redirecting historical and theological-ethical investigations along the lines sketched by Weber that I undertake this essay. I have, of course, limited myself to a specific period in English history, and I cannot claim to have proved anything about the affinities between religion and society outside of that period. But in attempting to demonstrate the usefulness of a certain approach in a distinct historical period, I wish to suggest a method of analysis that *may be* helpful in examining other historical and cultural periods. It is a method that attempts to deepen, systematize, elaborate and revise elements in Weber's avowedly provisional approach.

I am well aware that Weber was operating according to a "method of difference," that is a method of comparison, and that the *Protestant Ethic and the Spirit of Capitalism* was part of a wider comparative effort. It may well be that the advantages or disadvantages of the method to be elaborated here can only finally be determined on the basis of a similar kind of comparison. Nonetheless, since it is the particularities of the relation between Calvinist-Puritanism and 17th-century English society that have, of late, been so vigorously challenged, perhaps a specific reexamination of the material itself is in place, both in order to reemphasize, at least tentatively, the validity of Weber's insight respecting the rise of capitalism, and to provide a perspective somewhat different from Weber's by which to scrutinize the relation of religion and society.

Though the major part of the essay is taken up with what I hope is a fairly objective analysis of the sources, my concern is not exclusively "scientific." I am concerned not only to show that there are important affinities between Calvinist-Puritanism and the conceptions and patterns of social life of 17th-century England, but, also, to evaluate the adequacy of the theological content that was brought to the social situation around the turn of the 17th century. With respect to Christian social ethics, how satisfactory were the contributions of Calvinist-Puritanism to the ethos of a burgeoning "capitalist society"? Are there particular deep-seated theological defects in this system of thought which require revision? If so, how would a revised position look in relation to the dynamics of capitalist society? These are broad questions whose answers require much more development than I can possibly provide in this essay, and it is only in occasional footnotes and in the Conclusion that I can even hint at some answers. Still, they are questions that emerge naturally from the argument itself, and in an essay written for a degree in Theological Ethics, they deserve to be dealt with, if only in a most rudimentary way.

I should like to express my deep appreciation to those persons who have provided both the "ideal" and the "real" factors necessary for producing a study such as this. To my "Doktorvater," Professor James Luther Adams, I owe a special debt of gratitude. He first introduced me to the significance of Max Weber and of the questions Weber was raising about the relation of religion and society. Furthermore, Professor Adams whetted my interest in the law, and particularly in the law of corporations. It was out of his initial stimulus that this entire project grew. His continuing counsel and guidance with respect to the content and the construction of the essay, and his painstaking reading and rereading of the manuscript, simply put me deeper in his debt.

This project attempts to relate certain kinds of material which are usually treated independently of one another by different disciplines. It is not unpresumptuous to undertake such a study, and whatever success it may achieve is the result of the supereragatory labors on my behalf of Professor Harold J. Berman of the Law School, Professor Paul L. Lehmann of the Divinity School and Professor Talcott Parsons of the Department of Social Relations. The chapter on the common law is the fruit of continuing correspondence and conversation with Professor Berman. His willingness and ability to instruct me, as a layman, in the ways of the law, and his edifying criticism of my thinking was indispensable. Likewise, it was through the stimulation and criticism derived from several years association with Professor Lehmann that the chapter on Calvin was produced. He has read and reread various drafts of that chapter, and he has always had the most penetrating recommendations to make.

Thirdly, Professor Parsons' general framework of analysis, as well as specific suggestions and comments he has made regarding my argument, have been invaluable. Ever since the ideas expressed here began to germinate, he has given me encouragement and direction. The availability of both Professor Parsons and Professor Berman to someone outside their fields was a constant source of amazement and of gratitude.

I should like to thank the Corporation and the Committee on General Scholarships of Harvard University for awarding me the Kennedy Travelling Fellowship for 1961-62. It made possible an enriching year of research

in Germany and England, and provided an opportunity for writing this dissertation. Also, let me express my thanks both to the Evangelische Akademie at Arnoldshain, Hessen und Nassau, for accommodating my family and me during a seven-month stay there, and to Professor Dietrich von Oppen of the Seminar für Sozialethik at Marburg University. He very kindly made it possible for me to combine work on the dissertation with a very fruitful association with him. Finally, I want to acknowledge the helpfulness of the staffs of the Houghton Library at Harvard, the Reading Room of the British Museum and the Library of the Honourable Society of the Middle Temple.

INTRODUCTION

In this essay we seek to contribute partial answers to two basically related questions: 1) In what way does theological language follow its own logic, independent of the conditioning factors of environment? 2) How are the ethical implications of that language related to institutionalized patterns of social action and the conceptions that underlie them?

We have selected a particular historical period when conflict in theological and social patterns was the dominating theme, namely the years from about 1570 to 1625 in England. Although it is necessary for the sake of our argument to include a rather detailed account of the theology and social thought of John Calvin (Chapter I), the main focus of our study is, first, on the nature of the Puritan-Anglican controversies that occurred between 1570 and 1603 (Chapters II and III), and, then, on their relation to specific conflicts within legal thinking which emerged around 1595 and became sharply formulated by 1624 (in the Statute of Monopolies) (Chapter IV).

In our Conclusion we shall attempt a brief evaluation of the kinds of relation we discover between certain theological formulations and certain conceptions and patterns of social life.

This Introductory chapter is divided into three parts. I. A discussion of the general question of the independence of theological language in relation to social conceptions and patterns. This discussion will be carried on in the light of Weber's approach to the 'Protestant ethic'. II. A suggested method for dealing with the problem of the independence of theological language. III. An introduction to the specific area of social conceptions and patterns to be compared, in this essay, with theological formulations.

I.

"The sixteenth century is full of the endless fooleries of disputes about doctrine, even more senseless--since they were largely over things by definition unknowable--than those of Marxism in our own time," states A.L. Rowse.[1] Mr. Rowse urges his readers to join him in adopting an objective method with which to analyse the religious life of the sixteenth century in order to "avoid much of the endless, the sterile and stultifying, conflicts of doctrine and theory, of what men think they think." He concludes that "one attaches less importance to their notions than to themselves. The men are more important than what they suppose."

We are told by Mr. Rowse that the real point of conflict between the Anglicans and the Puritans was not theological or doctrinal; it was that the Anglican representatives, such as Richard Hooker, were reasonable and the Puritans were not. He thinks it historically obvious that "by the time (Hooker) had finished with the Puritans he had left them--in the gentlest, most reasonable manner--with hardly a foot to stand on."[2] But the Puritans "went on standing, since few people are ever persuaded by rational argument." According to Rowse's objective analysis, the Puritans were simply a group of ambitious, egotistical individuals. "Power was--as usual--what they wanted; and therefore the issue of Church government was the important one." The motives of the Puritans are summarized with the remark: "...as we all know, human egoism is the greatest motive

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1. A.L. Rowse, The England of Elizabeth: The Structure of Society. (MacMillan Paperback, 1961), 368.
2. Ibid., 486.

force in the world."[1] It is hardly necessary for Rowse to confide to us that he likes Puritanism so little.[2]

From a historical point of view, from the point of view of understanding the character of social action and the place and function of religious symbols in that action, are Mr. Rowse's likes and dislikes particularly compelling? Are his highly impressionistic, subjective and arbitrary judgments as to who is motivated by 'reason' and who by 'egotism' very discerning? Is his superficial conclusion that the central issue of dispute over church government is but a question of 'power' (whatever that means) at all enlightening? We hope to show in the course of this essay that the answer to these questions is a round no. Not only does Rowse breezily ignore the vast complexity of the relationship between the Puritans and the Anglicans in Elizabethan England. More profoundly, he fails to grasp the way in which theological discussions over religious systems of meaning, in a given historical situation, are related to the institutional patterns of social behavior.

Unfortunately, many other historians share Rowse's general approach. Again and again, one reads discussions that purport to reduce the Anglican-Puritan controversies to 'more basic' non-religious factors,[3] or to "prove" that the theological disputes were unrelated to legal, political and economic aspects of life,[4] or to show that the distinctions between them are, at bottom, insignificant,[5] or to defend one or the other party in

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1. *Ibid.*, 488.
2. *Ibid.*, 479.
3. H.R. Trevor-Roper, *The Gentry, 1540-1640* (*Economic History Review Supplement*), april. 1953.)
4. H.M. Robertson, *Aspects of the Rise of Economic Individualism* (Cambridge, 1933).
5. Charles and Katherine George, *Protestant Mind of the English Reformation* (Princeton, 1961).

the dispute, thereby tending to obscure the fundamental and crucial issue.[1]

This essay is written partly in order to demonstrate that the disputes that took place between Anglicans and Puritans in the latter part of the 16th century are neither reducible to psychological or economic factors, nor are they theological distinctions without differences, nor were they unrelated to the vastly significant events occurring between 1570 and 1640. It is with the positive[2] relationship between religious systems of meaning as in some sense independently significant, and the changing patterns of social action in the Elizabethan and early Stuart eras that we shall be concerned.

In pursuing such a concern, we are, of course, indebted to the pioneering work done by Max Weber in his studies in sociology of religion, and especially in the famous and controversial essay, The Protestant Ethic and the Spirit of Capitalism. In that essay, and in much of his other work, Weber investigated the positive relationship between meaning, values and action. "Action" (Handeln) he defines as "any human attitude or activity (Verhalten) (no matter whether involving external or internal acts, failure to act or passive acquiescence) if and insofar as the actor or actors associate a subjective meaning (Sinn) with it."[3] According to Weber, "action" and "meaning" are inseparable terms, and it is impossible to understand history apart from the meaning and values in relation to which men behave. Man is a symbol-bearing or meaning-positing creature; indeed, just these activities distinguish him as "man."

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[1] D.J. McGinn, Admonition Controversy (New Brunswick, 1949). In the spirit of Rowse, McGinn defends Whitgift as supremely reasonable, while he finds Cartwright 'a master of propaganda,' a man easily given to the use of invective and ridicule when his logic fails, because he is more interested in converts than truth. This judgment seems to me highly subjective. In any case, it misses the real point.

[2] We have chosen this term with some care. The reason for its use will emerge in the course of this introductory essay.

[3] This definition was extracted and translated by Talcott Parsons. It is taken from Weber's Wirtschaft und Gesellschaft, I. It is quoted in Parsons' Structure of Social Action (Glencoe, 1949), 640-1.

This means that man interprets (*deuten*) his environment and organizes his action in response to it with reference to a value-system. From the point of view of the actor, these values or meanings are not continuous with the environment in which he finds himself--they are not predetermined by it--but they are different from or over against it. Man does not respond to his surroundings automatically or completely involuntarily (nor is his action simply the result of subconscious drives such as 'egotism'). Man makes a *decision* between alternative value-orientations that are related to different patterns of action.[1] The relationship of the actor to his environment is, therefore, always an "elective affinity" (*Wahlverwandtschaft*) in terms of one or another "ideal system of meaning" (*irreale Sinngehalt*).

Weber makes a central distinction between the "ideal" and the "real" or "material," between the *Idealfaktoren* and the *Realfaktoren* or the *Überbau* and the *Unterbau*. The fundamental differentiation of the two dimensions of social action substantiates for Weber the independent coherence of a system of meaning, its *ideell Gesamtzusammenhang*, *Sinnzusammenhang* or *Sinntotalität*, as he variously refers to it. In other words, the system of meaning by which a given culture interprets or symbolizes its patterns of behavior, is not reducible to 'material' or 'real' factors, it is not adequately to be explained by economic or psychological analysis.[1] It is for that reason that what Weber calls Verstehen (understanding) is so important in social analysis. One must investigate not only the external environmental changes that take place in the economic, legal and political institutions in a given historical context. In order to 'understand' the changes that make up historical development, one must also investigate the systems of interpretation or meaning as independent variables, not as the function of one or another of the 'material' factors.

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[1] In a typically able summary of this central point in Weber's thinking, Alexander von Schelting (*Max Webers Wissenschaftslehre*, Tübingen, 1934) remarks: "Die Entscheidung angesichts des aufgestellen Zwecks (oder die Wahl zwischen verschiedenen möglichen wertenden Stellungnahme zu einer gegebenen praktischen Situation) zu treffen, ist Sache des Handelnden: 'Nach seinem Gewissen und seiner persönlichen Weltanschauung' hat er die Werte abzuwägen und zwischen ihnen zu wählen." (22-3)

For Weber religion represents a system of action oriented to patterns of meaning.

> ...wherever the direction of the whole way of life has been methodically rationalized, it has been profoundly determined by the ultimate values toward which this rationalization has been oriented. These values and points of view were thus religiously conditioned. Certainly they have not always, or exclusively, been decisive; however, they have been decisive insofar as an ethical rationalization held sway, at least so far as its influence reached. As a rule, these religious values have been also, and frequently absolutely, decisive.[2]

Religion has to do with the ultimate symbols and values that give meaning and coherence to a system of action. Insofar as theology, as the 'rationalization' of a system of religious beliefs,[3] deals with questions of ultimate coherence or meaning, it is irreducible or independent; it has its own logic, its own Eigensetzlichkeit. For this reason, it can at times be decisive or determinative, in relation to non-religious factors, for the direction of social action. It has a point of leverage all its own.

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[1] Max Weber, Gesammelte Aufsätze zur Religionssoziologie (Tübingen, 1947), I, see 240. Translated in H.H. Gerth and C. Wright Mills, From Max Weber: Essays in Sociology (Galaxy Book, 1958), 267-270.

[2] G.A.z.R.S., I, 259. I have slightly altered the translation found in Gerth and Mills, Ibid., 287.

[3] As Weber says, "All theology represents an intellectual rationalization of the possession of sacred values." (Gerth and Mills, op.cit., 153) He continues, "theologies presuppose that certain subjective states and acts possess the quality of holiness, that is, they constitute a way of life, or at least elements of one, that is religiously meaningful." (154) That is to say, theology deals with beliefs that

> The rational elements of a religion, its doctrines, also have an autonomy: for instance, the Indian doctrine of Kharma, the Calvinist belief in predestination, the Lutheran justification through faith, and the Catholic doctrine of sacrament. The rational religious pragmatism of salvation, flowing from the nature of the images of God and of the world, have under certain conditions had far-reaching results for the fashioning of a practical way of life.[1]

It is obvious why Weber would strongly resist any statement that described a theological discussion as a series of senseless and endless fooleries.

These considerations, too often ignored, lie behind Weber's essay on The Protestant Ethic and the Spirit of Capitalism. Here part of his concern is to understand how it was that "rational bourgeois capitalism"[2]

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involve a commitment to "a way of life." It deals with language that involves action. That is apparently what Weber means by "possession" in this context. The relation between a system of theology and a system of action shall be one of the burdens of this essay.

[1] G.A.z.R.S., I, 258-259; see also 240. Translation from Gerth and Mills, op.cit., 286.

[2] For a summary of the meaning of the term and of its relation to "economic rationality" in Weber's thought, see Parsons, Structure of Social Action, 503-16., 503-516. (Cf. Reinhard Bendix, Max Weber: An Intellectual Portrait, New York, 1960, 75-6.)

It would appear that an independent "middle class" or "bourgeousie," characterised by the "ascetic virtues" of rational acquisition of profit, work as an end in itself, individual initiative within a calling, is, in Weber's analysis, intrinsic to the rise of modern capitalism. As he says, the central problem at issue with respect to the history of culture is not "the development of capitalistic activity as such, differing in different cultures only in form: the adventurer type, or capitalism in trade, war, politics or administration as sources of gain. It is rather the origin of sober bourgeois capitalism with its rational organization of free labor...The problem is that of the origin of the Western bourgeois class and of its peculiarities..." in relation to "the capitalistic organization of became "a way of life common to whole groups of men."[1] How was it that a society came to be cut loose from traditionalism in which money-making was controlled by all kinds of non-economic factors? How was it that business activity became regulated and organized around strictly economic ends rationally calculated in terms of capital? How was it, Weber asked in effect, that whole groups of men came to *value* economic life as an independent sphere of action which must be permitted to behave according to its own autonomous laws? His answer was that the 'Protestant ethic,' and particularly the Calvinist-Puritan ethic, played a positive role in providing the system of values which would make economic rationality not simply an isolated, sporadic form of business practice, such as was found in 15th-century Italy, but a way of life.

The main outlines of Weber's argument need not detain us, for they are generally familiar and have been recapitulated time and again in critiques, defenses and summaries of his thesis. We wish, simply, to emphasize two aspects of the study which are of the utmost importance for our investigations. In the first place, Weber sought to illustrate the

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labor." (*Protestant Ethic*, 83-4., 23-4) Or, as he says, in ftnt. 93 at 279-80: "But it was from just (the) small capitalist class, and not from the great financial magnates, monopolists, Government contractors, lenders to the King, colonial entreprenuers, promoters, etc., that there originated *what was characteristic of Occidental capitalism*: the *middle-class* organization of industrial labor on the basis of private property" (italics supplied).

It was, apparently, the affinities between the "capitalist spirit" and the "middle class" which were particularly intriguing for Weber. He claimed it was Puritanism which "favored the development of a *rational bourgeois economic life*; it was the most important, and above all the only consistent influence in the development of that life." Indeed, according to Weber, it is difficult to distinguish Puritanism from the burgeoning bourgeoisie: "With great regularity we find the most genuine adherents of Puritanism among the classes which were rising from a lowly status, the small bourgeois and farmers..." (*Protestant Ethic*, 174; cf. Bendix, *op.cit.*, 78-9).

[1] *G.A.z.R.S.*, *I*, 37. *The Protestant Ethic and the Spirit of Capitalism* (Scribner Paperback, 1958), translated by Talcott Parsons, 55.

independent, irreducible logic of a theological system of meaning by treating the elements of consistence and coherence, existing, as he argued, between primitive Calvinism and English Puritanism. For a very good reason, Weber did not *begin* with Puritanism and then proceed to show its congruence with the 'spirit of capitalism'. He wished to prove that the logic of a system of thought (*das Gedankensystem*)[1] transcends the vicissitudes of a particular historical context, maintaining its own integrity. Therefore, it was important to establish that Puritanism could not be understood merely as a product of the times, as an ideological adjustment to historical circumstance, but owed its existence decisively to its theological heritage. That is not to say he overlooked the effects of time and place on a system of meaning. There certainly is theological variation and change. A process of 'elective affinity' is always taking place: a given group of actors makes a decision with respect to a system of meaning in relation to its experience and social situation. But the reasons for the decision are never *only* rationalizations for economic or psychological interests.[2] They are always, to some degree, determined by the logic of the system. Consequently, theological and ethical discussions by the Puritans were meaningful in themselves, for they referred to and were constrained by an objective system of situationally transcendent ideas (Mannheim).[1] If the Calvinist roots of Puritanism are disproved, one, if not the, fundamental conclusion of The Protestant Ethic, and much of Weber's other work in religious sociology, is seriously threatened.

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[1] *G.A.z.R.S.*, I, 111-112, footnote 4. Parsons, *op.cit.*, 232-233: "...the content of ideas of a religion is, as Calvinism shows, far more important than William James...is inclined to admit. The significance of the rational element in religious metaphysics is shown in classical form by the tremendous influence which especially the logical structure (*die gedankliche Struktur*) of the Calvinistic concept of God exercised on life." "(Although the irrational element in religion is important) it does not prevent its being of the greatest practical importance, of what particular type the system of ideas is, that captures and moulds the immediate experience of religion in its own way."

[2] See Gerth and Mills, *op.cit.*, 61-65. Marx and Nietzsche represented for Weber the two dimensions of reductionism, economic and psychological. "With Marx, he shares the sociological approach to ideas: they are powerless in history unless they are fused with material interests: And with Nietzsche, he is deeply concerned with the importance of ideas for psychic reactions. Yet, in contrast to both Nietzsche and Marx, Weber refuses to conceive of ideas as being 'mere' reflections of psychic or social interests."

In the second place, he endeavored to show that Calvinist-Puritanism provided a new conception of social order which reoriented 'whole groups of men' so that they came to interpret and evaluate their relationships with other men in a new way. We repeat: for Weber Puritanism embodied a system of values that expressed a new conception of social order. The 'individualism' Weber saw in Puritanism did not signify the breakdown of social relationships. It signified a different set of relationships, a different way, so to say, of understanding society. If it could be demonstrated that Puritanism had only negative effects upon English social life, that its 'atomism' served only to shatter the previous organic organization of society and, in the process, removed the influence of religion from social life, then Weber's second underlying tenet would be invalidated.

Most of the vast amount of criticism[2] of the Weber thesis has, in one way or another, challenged his conclusions at these two points. With regard to the first, Reformation scholars, such as Bieler[3], Bohatec[4] and

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1. See Karl Mannheim, Ideology and Utopia (Harvest Books, 1959), 193.
2. For an excellent summary of literature on the Weber thesis, see Ephraim Fischoff, "The Protestant Ethic and the Spirit of Capitalism," Social Research, February, 1944.
3. André Biéler, La Pensée Economique et Sociale de Calvin (Geneva, 1959), 493ff.
4. Josef Bohatec, Calvins Lehre von Staat und Kirche (Breslau, 1934).

to some extent Holl[1], have argued that there is a fundamental divergence between primitive Calvinism and English Puritanism. Calvin was not, say they, an advocate of atomistic or unrestrained economic individualism, nor were the doctrines of calling and predestination so central in his thought as Weber emphasized. The Puritans were only very distantly Calvinists. Along more or less the same lines, Beins[2] demonstrated that in Holland, in the latter part of the 16th century and the early part of the 17th, the Calvinist churches repressed rather than encouraged economic activity. Wertenbaker[3] has also shown the grave distrust of New England Puritans regarding the accumulation of wealth. Like the Dutch, their theology seemed to promote values antagonistic to the capitalist spirit.

Such authors as Yinger[4], Strauss[5], George[6], Robertson[7], Rachfahl[8] and Samuelsson[9] hold that Calvinism was basically opposed to capitalism

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1. Karl Holl, The Cultural Significance of the Reformation (Living Age Books, 1959), 89.
2. E. Beins, "Die Wirtschaftsethik der calvinistischen Kirche der Niederlande, 1565-1650," Nederlandsch Archief voor Kerkgeschiednis, 1931.
3. T.J. Wertenbaker, The Puritan Oligarchy (New York, 1947), 202-207.
4. John Milton Yinger, Religion and the Struggle for Power (Durham, N.C., 1946).
5. Leo Strauss, Natural Right and History (Chicago, 1953). See also Strauss's "Comment" in Church History, XXX, I (March, 1961), 100-102.
6. C.H. and K. George, op.cit..
7. H.M. Robertson, op.cit..
8. Felix Rachfahl, Calvinismus und Kapitalismus in Internationale Wochenschrift, III, 1909; IV, 1910. See also Ernst Troeltsch's extensive review and criticism: "Die Kulturbedeutung des Calvinismus," Gesammelte Schriften (Tübingen, 1925), IV, 783-801.
9. Kurt Samuelsson, Religion and Economic Action (London, 1961), translated from Swedish by E. Geoffrey French. Samuelsson's book demands special mention, not because of its contribution to the general literature (which is negligible), but because it is the most recent expression of so many of the typical and wildly inadequate rejections of Weber's thesis. In the first place, the criticism we make directly below regarding the lack of arduous and systematic comparative theological analysis in many of Weber's critics, applies directly to Samuelsson. There is one vague reference to Calvin's Institutes (30), and an

in any form and that Puritanism was simply an accommodation or a corruption of the original theological system. They are of the opinion that factors such as the Renaissance, the rise of the nation-state, scientific and banking discoveries, and the growth of religious tolerance were much more the causes of the capitalist spirit. In roughly the same camp, Hudson[1] has recently asserted that the association between Calvinism and the spirit of capitalism in England was an 'historical accident,' to be understood as a manifestation of the general decline of religion and of its social controls.

In various ways, one of the objectives of all these studies is to prove the theological incoherence between original Calvinism and 'accommodated' 17th-century Puritanism. The conclusion, therefore, follows that Calvinism and Puritanism share no situationally transcendent logic. Does this mean that there is, in fact, no coherence, no profound theological

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extremely random and superficial treatment of the 'Puritans'. We offer this essay as a refutation of his conclusion that "the economic views of the Puritans neither encouraged nor obstructed the spirit of capitalism." (42)

In the second place, his failure to take account of the important affinity between the late 16th-century Puritans and the "emergence of a fairly broad 'middle class'"," as well as of the common ideal assumptions between them, is appalling (see 117-8). Again, our essay attempts to demonstrate the consistent theological background for a doctrine of "economic liberalism"."

In the third place, there is an amazing lack of appreciation of the important differences between types of capitalism (see our comments on Nef, 37-8 below), and of the obvious distinctions between mercantilism and 'free enterprise.' The unsophisticated way in which 'Colbertism' is compared with the 'spirit of capitalism' in England simply overlooks the unavoidable contrasts between them. While political control over industry was being extended in France during the latter 16th and 17th centuries, it was being radically diminished in England in favor of 'free trade' (see 38, below).

The point at issue is very much the question of differentiation between politics and economics; it is the question of the development of an autonomous sphere of 'free', individually-initiated economic action. Such a 'spirit' could hardly have prospered in 17th-century France under Colbert.

[1] Winthrop Hudson, "Weber Thesis Reexamined," *Church History*, XXX, I (March, 1961), 88-98.

relationship between Calvinism and Puritanism? It is significant that none of the aforementioned scholars, and, indeed, very few of the other critics of Weber, have made a painstaking comparative study of Calvin and the Puritans on the basis of primary sources read afresh.[1] Studies are normally made of one or the other. In order to deal with the problem of connections, the most arduous and systematic kind of theological analysis is demanded, for which facile generalizations are no substitute. It may be that Weber's particular conclusions regarding the connections have to be revised, but if connections are found, such revisions need not alter the basic validity of much of his work.

As to the second aspect, the relationship between religion and social order, many of the above-mentioned critics, as well as others unnamed, would find the association negligible so far as Puritanism and capitalism are concerned. How can religion contribute to the patterns of social action when religion is itself simply an accommodating, degenerating aspect of life? Typical is the remark of Mr. and Mrs. George: in social affairs "religion is conditioned far more than it conditions."[2] In direct rejection of what they take to be Weber's point of view, they continue in the same vein: "For the new world taking shape was to be a world of business and science, perhaps the first civilization to dispense with religion as a primary concern for thinking humanity."[1] We shall attempt to demonstrate that such statements (and one can find many similar examples) tell us far more about the presuppositions of the authors than about the historical situation supposedly being analyzed.

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[1] At least, there is absolutely no evidence of such comparative investigation in the books and articles themselves. From a scholarly point of view, the crucial character of this issue cannot be overestimated.

[2] George, op.cit. footnote 1, 74-75. The Georges' book, among many other deficiencies, is filled with self-confident assertions regarding questions of sociology of religion which demonstrate the most appalling lack of scholarly competence, not to say naiveté. For example, they speak constantly of the Christian religion as a recrudescence of 'kinship religion,' not far from tribalism! To anyone acquainted with the literature of sociology of religion, that is obviously absurd: what characterizes primitive Christianity is its emphasis upon differentiation of religion from kinship ties, of religious association from political and national affiliation, and so on. The only book in the field they cite is Troeltsch's Social Teaching (which they label rather infelicitously as the "big book"). While they might even have got some tips from Troeltsch, there is a bit more to be read!
Without giving any documentation, the George's feel at liberty, throughout their book, to make facile conclusions about complex matters

A book that deserves special mention is R.H. Tawney's celebrated Religion and the Rise of Capitalism.[2] His analysis of the relation of religion to social order is certainly one of the most scholarly and careful in a field where scholarship and care are not usually very apparent. Furthermore, he represents a point of view often taken as complementary to Weber's own: one still hears of the 'Tawney-Weber Theory' ! Unlike many fellow-critics of the Weber thesis, Tawney makes a sincere effort to compare the teachings of the Reformers, and especially of Calvin, with the later attitudes of the Puritans. He concludes that while there is some relationship, something in the spirit of Calvinist-Puritanism that made a unique and independent contribution to the growth of capitalist mentality in 17th-century England, Puritanism represents a process of development, so that its similarities to original Calvinism are all but destroyed. The Geneva of John Calvin was "the very soul of authoritarian regimentation," of extreme discipline and control. There existed in Geneva what Tawney refers to as the 'dictatorship of the

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of church history and theology. We shall have occasion later to deal with the main conclusions of their study. One wonders why this book was ever published!

[1] Ibid., 173.

[2] (Mentor Book, 1958)

ministry' under which the kernels of individualism contained in Calvin's theology were rigorously suppressed, not to say eliminated. Tawney describes the work of Calvin and Beza as an attempt to perpetuate "with new intensity the mediaeval idea of a Church-civilization," "to make Geneva a pattern, not only of doctrinal purity, but of social morality and commercial morality."[1] It is the element of discipline and social control that gets lost in the development of Puritanism. Not that Puritanism was opposed in principle to discipline in social relations; in fact, says Tawney, it advocated a still more stringent self-control. But it rejected the idea that the Church and the state should any longer be the agents of regulation; the emphasis now was upon the will of the individual[2] and its solitary communion with God.[3] Although Puritanism was not without its collectivist, centralist tendencies (represented by the right-wing Presbyterians and Independents), these 'naturally' became separated from the emphasis laid upon the individual and his will, and in the process the Puritan's sense of social solidarity was corroded.[4] Society increasingly became pictured as a group of atomistic individuals claiming their rights, but ignoring their obligations--a picture, according to Tawney, which coincided congenially with the developing economic and social patterns.

> The distinctive note of Puritan teaching was...individual responsibility, not social obligation. Training its pupils to the mastery of others through the mastery of self, it prized as a crown of glory the qualities which arm the spiritual athlete for his solitary contest with a hostile world, and dismissed concern with the social order as the

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[1] *Ibid.*, 179.
[2] *Ibid.*, 167.
[3] *Ibid.*, 189.
[4] *Ibid.*, 191.

prop of weaklings and the Capua of the soul.[1]

The story of Puritanism is a story of the devaluation of social responsibility and of the rejection of the church as an independent source of moral control. It is, in effect, the story of the withdrawal of religion from any positive relationship with the social order. It tells of the moral abandonment of society to a system of "snatching to hoard, and hoarding to snatch," a system that is "absolutely irreligious, without internal control."[2]

It is difficult to understand how Tawney's name ever became linked to Weber's. They are saying exactly the opposite thing! For Tawney, Puritanism aided in dissolving the ties between society and religion, in permitting irreligious values to take over. For Weber, Puritanism contributed positively to the reevaluation of the social order in new categories of meaning and understanding. Tawney sees in Puritanism the decline of moral authority and control; Weber sees in it the redirection and the reinterpretation of the place of moral authority in the social order. He perceives not a one-sided emphasis on rights to the exclusion of obligations, but a redefinition of both rights and obligations in accord with a new system of meaning and values.[3]

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[1] *Ibid.*, 226.

[2] *Ibid.*, 235. The latter is taken by Tawney from John Maynard Keynes in support of his general position.

[3] See O.H. Taylor, "Tawney's *Religion and Capitalism*, and Eighteenth-Century Liberalism," *Economics and Liberalism* (Cambridge, 1955), 24-36, for an essay very critical of Tawney at this point.

An essay that attempts to extend Tawney's analysis is Christopher Hill's "Protestantism and the Rise of Capitalism" in *Essays in the Economic and Social History of Tudor and Stuart England*, ed. F.J. Fisher (Cambridge, 1961), 15-39. The essay is written with Hill's usual, stimulating insight. Insofar as he seeks to take the independent contribution of theology to social life seriously, he introduces

Our brief survey of the representative criticisms[1] of the Weber

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an interesting perspective. As he says, he is concerned with what "flowed from the logic of (Luther's) theological position." (24) However, the essay also brings to light some of the doubtful assumptions that have been lurking in certain of Hill's previous essays. He claims that the Reformation in no way supplies a new ethic, but that it simply intensifies the individual's inward, 'spiritual' relation to God: "For the reformers, the direct relationship of the soul to God was what mattered: the priest, the Church as an institution, were quite secondary." (19) (With respect, at least, to the Calvinist-Puritans, this statement about the church as an institution being of secondary importance is simply not true. See our treatment below.) This new theological emphasis on the internal condition of the heart "helped to dissolve the hard crust of custom, tradition and authority." (35) It was, thus, that the social order sanctioned by traditional scholastic theology could be radically questioned. The end result of Reformation theology was, according to Hill, a *removal* of religious restraint from a burgeoning capitalist mentality, and 'rationalization' of the Protestant's adjustment to it. Protestantism allowed "social pressures" to influence individual conduct more freely." (34) "There is nothing," says Hill, "in protestantism which leads automatically to capitalism: its importance was rather that it undermined obstacles which the more rigid institutions and ceremonies of catholicism imposed." (36) Protestantism's "*most obvious effects were negative.*" (36, italics supplied.) "In a society already becoming capitalist (writes Hill), protestantism facilitated the triumph of the new values. There was no inherent theological reason for the protestant emphasis on frugality, hard work, accumulation; but that emphasis was a natural consequence of the religion of the heart in a society where capitalist industry was developing. It was, if we like a rationalization; but it flowed naturally from protestant theology, whose main significance, for our present purposes, is that in any given society *it enabled religion to be moulded by those who dominated society.*" (Italics supplied.)

The similarity of this view with Tawney's is notable, and we would level the same criticisms against it that we level against Tawney (see below). There is here, we would argue, no genuine appreciation of the central, *positive* thrust of Calvinist theology (the examination of Luther is *curious*, because with respect to Puritanism and the 'rise of capitalism' it is largely beside the point). One is forced to conclude that with Hill's essay, as with most recent historical treatments of the Weber thesis, there is no grasp of the inner logic of a theological-ethical system of thought.

[1] We deal with only representative *criticisms* of the Weber thesis (as we hinted in the Preface) because they seem to characterize the most recent and wide-spread *historical* evaluations of the specific relationships between Calvinism, Puritanism and the 'spirit of capitalism.' Apart from the older 'defenses' of Weber (see Fischoff, *op.cit.*, for a treatment of the 'adherents'), there are, of course, important efforts on Weber's behalf by such authors as Talcott Parsons, B.N. Nelson, and R.K. Merton. But in the case of Merton (*Science*, *Technology and*

thesis has revealed that, for various reasons and in different ways, Weber's two basic contentions are widely rejected. Few are willing to concede that the Calvinist-Puritan system of meaning and values contains within itself an autonomous logic that is, in any important respect, independent of the conditioning effects of time and place or of non-religious factors. And none, including Tawney, is prepared to agree that the logic of that system contains a consistently positive and independent conception of the social order.

Moreover, there is the assumption in some of the criticisms that even in undertaking to prove these connections, Weber was seduced by a brand of German Idealism, and, therefore, sought to show that history is determined by ideas.[1] He is frequently condemned for oversimplifying the complexity of historical causation. Weber was certainly aware of this problem, as any careful reading of *The Protestant Ethic* will reveal, and

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Society in 17th-Century England, *Osiris* IV, 2 (1938)) and Nelson (*Idea of Usury*, Princeton, 1952), Weber's thesis is simply extended and broadened, and neither author attempts a systematic reexamination of the particular affinities between Calvinism, Puritanism and the 'spirit of capitalism.' Parsons defends Weber (e.g. in "H.M. Robertson on Max Weber and His School" in *Journal of Political Economy*, 43 (1935), 688-696), but more on theoretical than on historical grounds. In *Structure of Social Action*, Parsons argues that Weber's "method of difference" (i.e. of comparing and contrasting the presence of 'rational bourgeois capitalism' in the West with its absence in other civilizations) "is a perfectly valid scientific method *provided, of course, that Weber's allegations of fact are correct.*" (513, italics supplied.) Historically speaking, Weber's "allegations" regarding Calvinism and Puritanism are precisely what is at issue. It is *their* validity that is so readily being attacked. Therefore, a systematic reexamination of the material from which Weber drew his conclusions may not be out of place in supplementing social-theoretical concerns.

[1] Such criticisms are very popular, but usually very short-sighted. For example, Gabriel Kolko, "A Critique of Max Weber's Philosophy of History," *Ethics*, LXX,1 (October, 1959).

he attempted to guard against oversimplification.[1] But even if Weber never provided a completely satisfactory solution to the question of historical causation[2] (who has?[3]), it will be observed that the two aspects we have been emphasizing do not, as such, primarily involve that problem. As we have shown, much of the criticism of Weber revolves around the quite empirical problem of the theological relation between Calvin and the English Puritans. Is there a logical coherence, or is there not? Is there a similar understanding of social order, or is there not? Those questions can be answered by a comparative reading of the sources. It is (supposedly!) on the basis of that kind of study that Weber has been attacked; there is nothing 'geistlich' about such investigations. They can certainly be undertaken without entailing the claim that all of modern civilization was determined by John Calvin! When and if the coherence is established, one can begin to talk about the congruence[1] between the religious system and the patterns of social life. But even to raise the question of congruence is not necessarily to raise the complex question of historical causation. If we can demonstrate the way in which the independent logic of the Calvinist-Puritan symbol system concurs positively with the changing patterns of English social life in the crucial years from 1570 to 1640, we shall not have thereby denied that a rich variety of historical causes is at work in shaping that society. We shall simply have gone a little way towards reenforcing the idea that religion is not a mere reflection of other factors, but, rather, an independent source of social values that must be taken into account in the evaluation of any society.

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[1] By now it is a commonplace to point out Weber's careful qualifications of his thesis, but they still get overlooked. See *The Protestant Ethic*, 26-28, 183.

[2] An excellent treatment of the "Zwiespaltigkeit" and "Unklarheit" in Weber's understanding of historical causation exists in von Schelting's chapter, "Der Grenzen der methodologischen Selbstinterpretation Max Webers," *op.cit.*, 353-420. One's suspicions about Weber's use of 'ideal type' in relation to historical causation are abundantly confirmed by von Schelting. Von Schelting shows that Weber uses 'ideal type' in two senses: to mean *Sinnzusammenhang* and *Kausalzusammenhang*. The difficulty is that these two quite different usages become "gemischt." See esp. 360. The same ambiguity applies also to Weber's concept of *Verstehen*. See esp. 373.

Cf. also Parsons' discussion of the ambiguities in Weber's thought in "'Capitalism' in Recent German Literature," *Journal of Political Economy*, XXXVII, 1 (Feb., 1929), 48-9.

[3] This is an extremely knotty problem. Patrick Gardiner in his *Nature of Historical Explanation* (Oxford, 1952) has given a very helpful analysis of the question, and one that allows for the kind of investigation we are undertaking. "We should by now be clear that the conflict supposed to exist between materialistic and idealistic interpretations is an illusory one. We are not confronted by two realms of causes intersecting or running across one another. What we are confronted by are various uses of the word 'explain.'" (136) "There is no conflict, only a difference in point of view and purpose (in analysing them). Human beings are not 'really matter' or 'really mind': they are human beings. Different ways of talking about them, dictated by different interests, have been hypostatized into different ingredients." (139) However, I am left rather uncomfortable by the conclusion that 'ideas' or 'material factors' are *only* significant in history depending on the interest and background of the historian. What happens when the historian is concerned with *both* in relation to each other--as he who analyses and makes *ethical* decisions must certainly be? Gardiner's answer seems a bit too tidy.

II.

If the general outlines of the task before us begin to emerge, we have still to stake out our method of approach. Weber's contention that one of the main features of analysing religion and its relation to society is a logical or, better, theo-logical[1] problem, is of the utmost significance for our investigations. But his own way of illustrating this in The Protestant Ethic is not adequate. Weber employs what we might call a method of doctrinal selectivity by which he abstracts certain concepts from Calvin's theology, such as 'calling,' 'the sovereignty of God,' 'predestination' and so on, and implies that they are representative of Calvinism. He then traces the fortunes of these doctrines in Puritan thinking in order to demonstrate the coherence between Calvinism and Puritanism. With all its value as a beginning[2], such an approach misses the forest for the trees. These concepts are merely part of a wider framework of thought, a framework that must be grasped in its wholeness and complexity before the real logic of Calvinism can be seen and its implications for social life understood.

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[1] According to Fischoff, op.cit., the later Weber was much less interested in imputing causation to ideal factors. He came to the more moderate conclusion that we must do no more than speak of a "rich congruency of such diverse aspects of culture as religion and economics." Fischoff continues: "(Weber's) general view remained that human affairs are infinitely complicated, with numerous elements interacting." (76-77) Fischoff's words "rich congruency" are especially well-chosen, and might be substituted for "positive relationship," which we are using.

Kenneth Burke's new book, The Rhetoric of Religion: Studies in Logology[3], represents an approach to the logic of religious language that suggests a means for perceiving this wholeness and complexity. Although he does not refer to Weber, Burke is amazingly close to him in his basic attitude toward the relation of meaning to action. Man, says Burke, is a symbol-using animal, a fact made apparent in the very character of the language he uses. Words are inevitably symbols; they are not the same thing as the object they symbolize: "the word 'transcends' the thing it names."[1] Burke defines language as "symbolic action," insofar as its structure embodies and reflects the life of man as essentially a life of *action*. "I mean simply," he says, "that language in particular and human relations in general can be most directly approached in terms of *action* rather than in terms of *knowledge*" (in dramatic rather than naturalistic categories).[2] To analyse language as action means to perceive the logic of language according to the requirements and complexities of the *ethical* situation in which man finds himself. What Burke calls 'Dramatism' is thus opposed to 'Scientism,' or the attempt to reduce language to more basic naturalistic motives.[3] According to the latter approach, one must always go behind words to find out the real reasons why they are used. The structure of language must be explained by something 'deeper.' Action is, thus, reduced to motion.

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[1] In the strict sense of the term, i.e., systematic reasoning with reference to that which is taken to be ultimate.

[2] With more humility than many of his critics Weber accentuates the "provisional character of these studies": "They are destined to be superseded in a much more important sense than this can be said, as it can be, of all scientific work." The Protestant Ethic, op. cit., 28.

[3] (Boston, 1961) This is a work of great importance and great insight. In our use of it we shall emphasize only those portions that are relevant to our investigations, though that will mean ignoring much that is central to Mr. Burke's concern. To one not attuned to the refinements of literary and dramatic criticism, this book, despite its suggestiveness, seems often unduly impressionistic and unsystematic. Parts of the argument are extremely hard to understand. But this in no way minimizes our indebtedness to the parts we can understand!

> *Dramatism* (on the other hand) *assumes a qualitative empirical difference between mental action and mechanical motion.* If men ever invent a 'machine complex enough' to obliterate the present empirical distinction we make between our deal-

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[1] *Ibid.*, 16.

[2] *Ibid.*, 38.

[3] The kinship between Weber's rejection of such reductionists as Marx and Nietzsche and Burke's rejection of 'Scientististists' is obvious. An excellent example of a 'scientistic' approach to ethical language is much of the work done in the name of so-called linguistic analysis. C.L. Stevenson's *Ethics and Language* or A.J. Ayer's *Language, Truth and Logic* are examples of bald reductionism. It is heartening that even within their camp the drastic limitations of that approach are being seen. Stephen Toulmin's *Examination of the Place of Reason in Ethics* marks a real advance, though the rather shallow and disappointing conclusions (a kind of warmed-over utilitarianism) detract from its merits. Burke's method, it seems to me, offers a far more helpful means for analysing religious and ethical language than 'linguistic analysis' has ever provided, precisely because he eschews all reductionism.

> ings with machines, the Dramatistic position will have to be abandoned, or at least greatly modified. But as things now stand, Dramatism is based on the obvious *empirical* distinction all men make between their approach to 'people' and their approach to 'things.' 'People' are entities capable of 'symbolic action'; to varying degrees they can be addressed, 'reasoned with,' petitioned, persuaded. 'Things' can but move, or be moved.
>
> *Action* involves *character*, which involves *choice*; and the *form* of choice attains its perfection in the distinction between Yes and No (between *thou shalt* and *thou shalt not*). Though the concept of sheer 'motion' is non-ethical, 'action' implies the ethical (the human personality).[1]

Burke distinguishes four levels of language: natural ('tree,' 'sun,' 'dog,' etc.), socio-political (all words describing social relations such as 'law,' 'justice,' 'monarchy,' etc.), words-about-words (grammar, rhetoric, etymology, literary criticism, and what he calls "logology" or words-about-the-Word), and supernatural ('ultimate' terms of the highest, most comprehensive degree of generality; what he calls "god-terms"--the province of religion). All language involves the last category insofar as it drives towards a 'Title of Titles,' the highest order of generalization, the 'essence' in which the irreducible structure of the language's basic components is brought to a sharp focus. This is what Burke calls "the Word." The Word contains the ultimate system of meaning or the highest principle of order or coherence (to use the phrase derived from our look at Weber). The Word is 'transcendent' or 'supernatural' precisely because it is not explainable by any higher category; it is literally (or linguistically) the last Word.

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[1] *Ibid.*, 40-41. Italics supplied.

The function of logology is to analyse the components of the Word in their logical relationship to one another, attempting to sort them out, not to reduce them to something else. It is in the Word, according to Burke, that the ethical or action significance of language is fully revealed. Turning to the Genesis account of creation to illustrate what he means,[1] Burke shows that the 'Word of God' is an act involving the polar terms "order" and "disorder." God speaks his Word of order (command), and the world comes into order (structured coherence) out of disorder ("the earth was without form"). Creation is order in both senses. In the second place, God's act logically involves man's act. Adam (meaning 'man') is he who may decide regarding God's order (command). It is this characteristic of responsibility which defines the nature of man.[2] Consequently, obedience and disobedience are logologically involved in God's Word. Finally, the perfect coherence of God's universe is thrown into partial discord by the disobedience of Adam, reflecting the way in which the term 'disobedience' refers back to 'order.' Had Adam been obedient to God's command, the coherence of the universe would have been maintained. The very disobedience of Adam and the subsequent social and natural disorder involve the need for the restoration of order and the achievement of obedience. Hence, the expectation of a 'Christ-figure,' a messiah who will fulfil, indeed, who will be the Word of God in all its dimensions. The terms 'order,' 'disorder,' 'obedience,' 'disobedience' are what Burke calls a family of terms that are logically implied in one another. You cannot have one without the others (in some arrangement). The story of Genesis, therefore, told in narrative, chronological form, can be understood in its logological form. The events of creation are not random events strung together as a story. They are a particular articulation of the ultimate components of language, seen, as language must be seen, in relation to and as an expression of ethical action.

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[1] Burke's analysis could also, presumably, be undertaken with respect to other religions. For example, the Word (logos) in Stoicism may be logologically compared with the Word of Hebrew-Christian faith in a most fruitful way. (See below.)

[2] *Ibid.*, 187.

Seen logologically, then, the Word of a particular religious system is not explainable in terms of one or another 'deeper' psychological, sociological or historical cause. Nor is religio-ethical language capricious or arbitrary (and therefore meaningless to the uninitiated); it has its own linguistic logic.

We wish to draw attention to the suggestive way in which Burke elaborates Weber's notion of the Eigensetzlichkeit of theological language. Burke has supplied us with a method of analysis that pushes still deeper Weber's conclusion regarding the independent inner consistency of religious formulations, and demonstrates that, in significantly different ways, religions inevitably organize and express different 'families of terms,' each with its own inner, 'logological' coherence. In other words, Burke offers an approach by which to get behind the specific doctrines to the more fundamental categories necessarily involved in the articulation of ultimate religious symbols. It is one of the methodological presuppositions of this essay that Burke's approach makes an important contribution towards systematizing the study of theological language in relation to action, and towards making possible fruitful comparisons between different theological frames of reference.

Although Burke discovers a variety of 'families of terms' in religious discourse, we shall attempt to show that the order-disorder-obedience-disobedience configuration, which we have briefly examined, is particularly appropriate for an analysis of the divergences between Calvinist-Puritanism and Anglicanism. If Burke is right, these terms should, in each system, fall into a definite and consistent pattern or logic. In short, they should form what we may call a discreet logic of order[1] in relation to different theological presuppositions. Perhaps it is in an analysis of the particular manipulation of the logic of order that we have a method for differentiating and relating given religious systems, as well as for apprehending their implications for the formation of social patterns of action. Burke makes an interesting comment in this connection: "...though terms, as seen from the strictly logological point of view, are analysed simply as implicating one another, theological distinctions between orthodoxy and heresy can be defined by the choice of some one sequence rather than another."[1] Perhaps it is precisely in the articulation of the logic of order that we can take hold both of the heart of Calvinism, including its view of social order, and of the relation between Calvinism and Puritanism. Perhaps here we have the key to perceiving the basic conflict between Puritanism and Anglicanism--in its theological and social dimensions--as a conflict of order. Our essay will be an attempt to demonstrate the usefulness of this method.

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[1] When dealing with a heavily charged word like "order," one must make as clear as possible how the term is being used. The word is central, and no other may be substituted for it in this study because it has, as Burke points out, the all-important double-denotation: 'command' and 'structure' or 'sphere of coherent relations.' It is the interplay and interaction of these inseparable denotations of the word 'order' that forms the heart of our analysis. Nonetheless, the connotations of the word may cause confusion. When applied to politics, it tends, in common speech, to imply more than just a 'sphere of coherence'; it tends to signify an unshakable kind of stability that is opposed to change. That is the case because the English word 'order' is required to cover a range of significances which is handled by different words in some other languages. For example, in German the sense of unshakable political order is handled by "Ordnung," while the obviously related terms "Gebiet" (meaning "district," "area," "territory," "sphere," "domain," etc.) and "gebieten" (to "command," to "order") carry the two denotations of "order" to which Burke draws attention. In terms of German, then, it is to the intrinsic linguistic relations of "Gebot" and "Gebiet" that we call attention, rather than to the more confusing and less apparent relations of "Gebot" and "Ordnung."

In this connection, it is interesting to reflect on the inseparable relations of the indicative and imperative moods that are built-in, so to say, to the twin dimensions of 'Gebot-Gebiet' and 'order.' That is, a command or 'directive' is only meaningful within a given (or indicative) sphere of relations; and the sphere of relations necessitates the power of direction in the form of a command (or imperative). Such considerations need a great deal of further investigation, but they seem to render meaningless attempts either to collapse the distinction between indicatives and imperatives, or to isolate one from the other.

In this light, we shall analyse the writings of John Calvin, and compare our findings with the work of two leading Elizabethan Puritans, Thomas Cartwright and William Perkins. Cartwright is chosen for obvious reasons: he was certainly the intellectual leader of the Elizabethan Presbyterians and undertook most energetically to enunciate and defend their cause. Perkins is chosen because he was one of the outstanding theologians of the 16th century, and his copious writings, while of great influence at the time, have largely been neglected by recent scholarship. He is selected also because some scholars regard him not as a Puritan at all, but as one of the chief defenders of the Anglican church. We shall examine the extent to which he was an Anglican. The treatment of Elizabethan Puritanism, in comparison with primitive Calvinism, will fill a historical gap left by Weber and many of his critics. Weber's broad leap from John Calvin (1509-1564) to Richard Baxter (1615-1691) is quite permissible in a provisional essay intended simply to suggest and to sketch important connections. But the general failure both to investigate the intervening, formative period of Puritanism during the latter 16th century, and to relate such a study to the developing patterns of social action, is hardly excusable in the flood of literature that has been written in reaction to Weber's Protestant Ethic and the Spirit of Capitalism. So long as this crucial transitional stage is ignored, with its direct and vital intercourse between the Continental Reformation and English Protestantism, the debate over theological continuity and discontinuity can never satisfactorily or reliably be answered.[1]

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[1] Ibid., 249.

Also, we shall compare our analysis of the logic of order in Calvinism and Puritanism with the work of the two outstanding Anglicans of the Elizabethan period, Archbishop John Whitgift and Richard Hooker. The voluminous debates between Whitgift and Cartwright and the extension and refinement of the debates by Hooker make such a comparison natural. These debates epitomize the central issues in the religious life of Elizabethan and Early Stuart England. Neither the 'official Anglican' (as we shall refer to it) nor the Puritan position can accurately be understood apart from the other. Indeed, a full appreciation of the thrust of Puritan thought and action is impossible without an examination

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1. We shall attempt to demonstrate that in a consideration of the 16th-century Puritans there is much important evidence to support Weber's general conclusions. With great insight Hill remarks in a footnote: "Weber and his disciples have been accused of 'grave anachronism' (e.g. by Laski, The Rise of European Liberalism, 34) since they generalized about Calvinism on the basis of late seventeenth-century examples of the permeation of medieaval doctrine of calling by a capitalist spirit. They could, however, have found evidence of the process already at work in Perkins." Hill, "William Perkins and the Poor," op.cit., 230, footnote 6.

of the Anglicanism against which it was reacting. Furthermore, Anglicanism deserves to be treated in its own right in order to grasp the novelty of the theological system it introduced, despite its avowed allegiance to the 'past.' We shall attempt to show that Anglican vs. Puritan was not a simple reflection of 'medieval' vs. 'modern.'

Finally, we shall be concerned to see the way in which the conflict of order between the two groups is related to the drastically changing patterns of English social behavior roughly between 1570 and 1640. The method of approach we shall employ in this final section of our essay, together with its relation to the more general methodology we are using, demands some special introductory explanation.

III.

As a focus for the relationship between the theological conflicts of the period and the radically changing patterns of social action, the subject of law emerges very naturally from the material. That the dispute between the Anglicans and the Puritans was a legal dispute hardly requires verification.[1] The Puritans were regarded by the Anglicans as seditious and subversive with respect not only to church laws, but also to civil laws. They were attacked as contaminators of the social order, breeding new and foreign notions of allegiance and obedience. The exchanges between the Puritans and the Anglicans in the 16th century were inevitably theological and legal, or, to use modern terminology, religious and secular. As one would expect, different interpretations of social institutional life grew out of the theological tension, and the question we must ask is how these different 'religious' interpretations were related to 'secular' legal patterns.

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[1] In writing the Laws of Ecclesiastical Polity, Hooker's "main purpose was to show that the claim of the Puritans to disobey the law of the Church was inconsistent with the nature of politic society and involved a denial of political obligation. He was therefore forced to begin with an exposition of the nature of law." (J.W. Allen, History of Political Thought in the 16th Century, London, 1957), 185.

The question gains in importance when one observes how closely allied were the Puritans and the common lawyers in the struggle for sovereignty[1] over the province and authority of the common law in the late 16th and early 17th century. John Dykstra Eusden has argued in Puritans, Lawyers and Politics[2] that while the Puritans had little or no influence on the common law, they joined the cause of the lawyers because of a shared antipathy toward the extension of royal domination. According to him, the association of religion and law was little more than a temporary marriage of convenience between two groups with quite separate intellectual heritages and ultimately with different purposes and values. Puritans and lawyers found a kinship based on 'ideological parallelism,' on certain similar characteristics.[3] There is, undoubtedly, something in what Eusden says. His conclusions guard against a facile identification of religious ideas with legal ideology. They point up the relative independence that the common law system had achieved in English history.

However, Eusden's account depicts the common law, at the turn of the 17th century, as possessing a far more stable and self-contained ideology than it actually had. He does not take into account the fact that this was a revolutionary period, in both the economic and the political sphere. England was experiencing a veritable industrial revolution, marking a

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1. George L. Mosse, Struggle for Sovereignty in England (Lansing, 1950).
2. (New Haven, 1958).
3. Ibid., viii.

phase in her life that had the deepest social and legal consequences. The patterns of society were altering radically, and with them legal interpretations and regulations. Upon what were the judges to rely in making decisions to fit the times? Precedent and legal tradition? What happened when neither applied, when the heritage of the common law reflected a feudal, baronial way of life hardly relevant in a time of growing cities and new forms of trade, commerce and industry? Were the judges to rely on 'fundamental law'? Even Eusden admits that this was a highly imprecise term, meaning all things to all men.[1] The point is that during this period the common lawyers themselves were not terribly clear or consistent with respect to the underlying principles of legal interpretation. A study of legal activity between 1590 and 1630 must do much more justice to the ambiguities and contradictions implicit in judicial decisions and opinions than Eusden's book does.

Some scholars such as Plucknett[2], who wish to emphasize the high degree of novelty and innovation in the legal system, go so far as to say that the most important legal figure of the time, Edward Coke, simply created out of whole cloth a conception of fundamental law, interpreting the legal traditions he inherited in the light of his own Elizabethan presuppositions. This is a contested point, but the creative role played by Coke in the determination of subsequent common law cannot be denied.

What is more, there were other legal complexities during this period:

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[1] *Ibid.*, 45. See also Hill's excellent chapter, "The Norman Yoke," *op. cit.*, 50-122.

[2] See J.W. Gough, *Fundamental Law in English Constitutional History* (Oxford, 1955), chapter 3, esp. 30-31 for a treatment of Plucknett's views. Plucknett's ideas are contained in "Bonham's Case and Judicial Review," *Harvard Law Review*, 20 (1926-27), 30ff. Many authors deal with the Elizabethan presuppositions of Coke. We shall examine them in Chapter IV.

were the judges to rely upon what Coke called 'judicial reason' for their authority? This term also bristles with ambiguity. Coke is altogether unclear whether it means the supremacy of the judges and courts or the supremacy of Parliament in matters of legal interpretation. Obviously, this question was not raised so long as Parliament was a 'high court' in which legislative and juridical matters were indistinguishable. But now the question was being raised. Now the old unity of political and legal life was falling apart, and the question of authority was inevitable.

In face of the complex and dynamic character of the common law, is there any relation between the fundamental issues over which the Puritans and Anglicans were disputing, and the inner conflicts that disturbed the very soul of the legal system? Does it make sense to say that the conflict of order which divided the two religious camps also struck at the heart of the legal thinking and activity of the time? In other words, does the common law manifest only its own independent system of meaning and interpretation, or does it contain traces of more ultimate (religious) systems of meaning that reflect wider and more ultimate questions of social order?[1]

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1. The questions we are asking have to do with the sociology of law. It is in the problem of the connection between meaning, values and legal patterns that the sociology of law is interested: "Sociology of law interprets the legal kinds of behavior and the material manifestations of the law on the basis of the inner meanings that inspire and permeate it... From these it proceeds to the values and ideas of law that find expression in legal patterns, and, finally, it analyses the contents of faith and intuition that support these values." Georges Gurvitch, Grundzüge der Soziologie des Rechts (Neuwied, 1960), translation is mine, 40-41. This book contains an extensive bibliography in the field of sociology of law.

There is a wide literature on the general problem of the components, including ideas and values, of judicial and legislative decisions. We can make simply a few random references. Chief Justice Holmes's comment in The Common Law (1881) is perhaps the classic: "The actual life of the law has not been logic; it has been experience. The felt neces-

Roscoe Pound has attempted to show that law does indeed contain traces of religious thought. He has argued in several places that what he calls the classical common law period (the end of the 16th and the beginning of the 17th century) was the nurturing ground for the develop-

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sities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which the judges share with their fellow-men, have a good deal more to do than the syllogism in determining the rules by which the law shall be governed." (1) Benjamin N. Cardozo speaks similarly in The Nature of the Judicial Process: "My analysis of the judicial process comes then to this, and little more: logic, and history, and custom, and utility, and the accepted standards of right conduct, are the forces which singly or in combination shape the progress of the law. Which of these forces shall dominate in any case must depend largely upon the comparative importance or value of the social interests that will be thereby promoted or impaired." (Yale Paperbound, 1960), 112.

Julius Stone's monumental work, The Province and Function of Law (Sydney, 1946) is, of course, centrally concerned with this problem. He is at pains throughout the book to show that Austinian or so-called Analytical Jurisprudence is untenable. See, for example, chapters III and XXV. He argues for the importance of social conditions, values, etc., and makes a very interesting statement regarding the relation of these factors in legal life. He rightly cautions us against a facile use of 'cause' and 'effect' in analysing a legal system: "The difficulties involved, indeed, in the whole concept of 'cause' and 'effect' in this field, suggest that it may be preferable to observe the correlations between environment, activities and attitudes, rather than to assign causative roles." (698) We take this to be methodologically very sound.

For other interesting investigations with the same essential conclusions, see W. Friedmann, Legal Theory (London, 1960), 4th edition, especially chapter 3, "Legal Theory and Social Evolution," 14-27. See also E. Adamson Hoebbel, The Law of Primitive Man (Cambridge, 1954), the first two chapters, 3-28. Another (rather more philosophical) attempt to show the interrelation of values, institutional life and legal activity is Helmut Coing's Grundzüge der Rechtsphilosophie (Berlin, 1950).

From an analytical point of view, these various attitudes represent an attempt to find a method that reduces law neither to ideas and values (Überbau) nor to the 'means of production of the material life' (Unterbau). There is the acknowledgement of the relative independence of a number of 'spheres of influence' all of which are important in understanding the function of a legal system. This essay is undertaken in that spirit, limiting its interest to the possible relation between the Anglican-Puritan religious controversy and the legal system. That there are a great number of factors at work in the common law during our period we hold as axiomatic. Neither our interest nor our competence will allow us to pursue them all.

ment of 'ultra-individualism,' or "an uncompromising insistence upon individual rights and individual property as the central point of jurisprudence."[1] Prior to this period, according to Pound, the common law tradition held as central the legal regulation of the individual in favor of social interests.[2] Perhaps, says Pound, the 'controlling factor' in the radical reinterpretation of the function of law was the influence of Puritanism,[3] with its "conception of a maximum of abstract individual self-assertion exempt from social control."[4] The core of Puritanism is contained in its 'principle of consociation' which held that "we are to be with one another but not over one another." "The whole is to have no right of control over the individual beyond the minimum necessary to keep peace."[5] It was these notions that led to a preoccupation with the freedom of the individual will[6] in all legal and social matters, making social legislation such a difficult affair in the 17th and 18th centuries. Because of Puritanism, the power of the magistrate and the legislator was minimized, and the Englishman came to view his property not as something to be used in the service of the commonwealth, but as a sphere over which his private interests were totally sovereign.

While suggestive, Pound's conclusions are a bit impressionistic and over-simple. As he himself implies in other contexts[1], there were many factors involved in the shaping of legal individualism, so that he certainly does not prove that Puritanism was the 'controlling factor' in the process. Such proof would require far more documentation than Pound supplies. In fact, there is a question whether 'individualism,' in the sense Pound uses it, accurately describes the legal tenor of the 17th century in England, and, even if it does, whether Puritanism itself can be so simply equated with it. As we shall see, both the common law and Puritanism are rather complex things. But surely the most disconcerting aspect of Pound's study is his failure to indicate the concrete ways in which religious sentiment influenced the common law at the turn of the 17th century. There is no analysis of the legal decisions of the time in order to establish the revolutionary changes Pound claims were taking place. Pound's examples of 'individualism' in law are drawn rather indiscriminately from the 18th and 19th centuries, from English and American judges.[2]

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[1] Roscoe Pound, "Puritanism and the Common Law," The American Law Review, 1911, (45), 811-829, 816. See also History of Legal Interpretation.
[2] The Spirit of the Common Law (Francestown, N.H., 1947), 69.
[3] Ibid., 36-37.
[4] Ibid., 49.
[5] Loc. cit.. Incidentally, Pound is sometimes given to characterizing the development of 'individualism' from the 17th to the 20th century as "the Puritan Element."
[6] Roscoe Pound, "The Role of the Will in Law," Harvard Law Review, 68 (1954), 4.

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[1] Roscoe Pound, Introduction to the Philosophy of Law (Yale Paperbound, 1959), 15, 16, 21. See also, Spirit of the Common Law, IV. "Rights of Englishmen and Rights of Man." 85ff.

[2] This deficiency is particularly acute in the light of the conclusions of Charles Niehaus in his unpublished Harvard Ph.D. thesis, The Issue of Law Reform in the Puritan Revolution (1954). In a careful way Niehaus analyses the attempts by various Puritan groups, during the Revolution, to reform the common law. He concludes that their impact was extremely minor, and though some degree of law reform was enacted under Cromwell at the behest of the Puritans, it was mostly swept away at the Restoration. Even the great law reforms of the 19th century "owed nothing either in principles or inspiration, to the efforts of their 17th-century predecessors." (iii) In other words, explicit Puritan influence on the particulars of the common law was nil.

Niehaus' study is valuable in that it renders unnecessary any further examination of the explicit, intentional connections between Puritanism and the common law. However, such an investigation is not our concern, nor, one has the feeling, is it really Pound's concern. In a rather unsystematic and impressionistic way, Pound is attempting to understand

Still, with all these deficiencies, Pound has opened up a problem area well worth investigating. The years between 1570 and 1640--which Pound refers to as the classical common-law period--were indeed a time of radical change in the conceptions of social authority and control. We have already pointed to the struggle for sovereignty between the courts, the crown and the Parliament. As the power of the king became increasingly limited, the position of the Anglican church was also decisively altered.[1] At the same time, economic transformations were taking place whose relation to the redefinition of authority and control was immeasurable. According to the persuasive conclusions of the eminent economic historian John U. Nef,

> There are grounds for speaking of an early industrial revolution in the north of Europe, and particularly in Great Britain ... They rest on a novel movement during the late sixteenth and early seventeenth centuries, especially in Great Britain, towards a concentration of industrial enterprise upon the production of cheap commodities in large quantities. If... history is concerned with human beings, it is changes in the values which men and women attach to life, changes in the purposes to which they devote their minds and bodies in their daily work, that are of decisive importance in orienting economic endeavor in new directions. In these respects the decades from about 1580 to 1640 were a turning point. It was then that persons in the north of Europe, and particularly in Great Britain, began to lay an emphasis on utility as the

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the way in which a system of law comes to embody and perpetuate a general way of looking at social life--a special system of values or a conception of order, as we have referred to them. It is our contention that the concurrence of important tensions and changes in legal and religious outlook toward the end of the 16th and at the beginning of the 17th centuries is more than coincidence. In this we believe ourselves to be not far from Pound's interest, however far we may be from his method of analysis and from many of his conclusions. These fundamental changes and tensions have not been analysed by Niehaus, nor by any other scholar, to my knowledge.

For an exceedingly tedious account of more or less the same period, see F.A. Inderwick, The Interregnum (London, 1891).

[1] The interdependence between 'bishop and king' had already been shrewdly discerned by James I.

goal of industrial life--on productivity as a self-justifying end.[1]

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[1] John U. Nef, *Cultural Foundations of Industrial Civilization* (Harper Torchbook, 1960), 59-60. The first part of this book summarizes much of the earlier work of Nef in the field of economic history. For that reason it is very valuable. Nef seems to me to prove conclusively that the economic revolution in the latter part of the 16th century, most centrally in England but also in Scotland, Holland and Sweden, produced patterns of industrial life *qualitatively different from* preceding Renaissance forms of 'capitalism.' He shows that Renaissance economic life was oriented toward the production of beauty, artistic objects and fine buildings for the enjoyment of the aristocracy. "(It) was hardly a movement in the direction of the mass consumption which is characteristic of the recent industrialized age. The common citizen in the towns had much less direct stake in the new palaces than his ancestors had in the old churches and cathedrals." (42) Indeed, precisely when new forms of vigorous economic activity were appearing in England and northern Europe toward the end of the 16th century, the countries of greatest industrial supremacy during the Renaissance (central and southern Europe) underwent a period of drastically declining economic output.

Nef's work should silence Weber's critics on the point that 'capitalism,' in the sense that he meant it, is to be found 'well before' the 16th and 17th centuries in southern Europe. It will be recalled that Weber's interest was in the extension of economic rationality to 'whole groups of men.' That is Nef's interest too, and his careful examination should be marked as a complete confirmation of Weber on this point. Is it simply a 'historical accident' that the rise of Puritanism concurs with the first industrial revolution in England, the country that was the center of modern economic development?

In his classic *Economic History of England* (London), I (1956, new edition), II (1948), III (1948), Ephraim Lipson provides further abundant documentation of the view that the 'Industrial Revolution,' with its attendant consequences of the rise of 'economic freedom' and the growth of the commercial middle classes, was an early phenomenon centering in the late 16th and 17th centuries. See his extremely interesting Introduction to II. Lipson remarks, for example, that "The ideal of the old order was stability: that of the new order was progress. For a century (1558-1660) (N.B.!) England was distracted by the conflict between these rival concepts... The 'Industrial Revolution' (of the 18th century) was not the cause of the triumph of the entreprenuer--on the contrary, it came first to England because the entreprenuer had already been liberated from the prison-house of tradition and authority" (II, cxvi).

Furthermore, Lipson underlines the interconnection of various spheres of social life and the general revolution that had occurred in all of them by the middle of the 17th century: "The position taken up by the Crown was one of the main reasons for the alienation of the middle class whose political self-assertion, born of a sense of

In his celebrated comparison between the place of industry and government in France and England between 1540 and 1640,[1] Nef demonstrates that whereas in France monarchical authority and power over economic life was extended and intensified, in England the opposite occurred. There economic life was being set free from political and legal restrictions, it was gaining its own autonomy, setting its own goals and developing its own rationality (to use Weber's terms). Economic activity was becoming, in other words, a sphere in which individuals were set free from traditional patterns of regulation, a sphere in which they stood, to an important degree, above the state and the courts, possessing an authority independent of the time-honored centers of restriction and control. Capturing the spirit of the age, Sir Josiah Child argued in his Discourse of Trade (1698):

> I conclude all our laws limiting the number of Looms, or kind of servants, and times of working, to be certainly prejudicial to the Clothing-Trade of the Kingdom...
>
> I conclude that stretching of Cloth by Tenters, though it be sometimes prejudicial to the Cloth, is yet absolutely necessary to the Trade of England, and that the

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economic power, was nourished and inflamed by specific grievances. By the side of the religious and constitutional struggles proceeded another struggle--a duel between the monarchy seeking to preserve the traditional framework of society, and an aggressive and progressive middle class bent on establishing its ascendance... The triumph of the Roundheads destroyed 'prerogative government' and a national church; and simultaneously it destroyed a society in which enterprise and initiative were fettered by a network of restrictions. The eclipse of the Tudor and Early Stuart regime was destined to usher in an era of economic freedom not less than an era of constitutional and religious freedom" (cxvi-cxvii). Lipson adds a footnote, in this connection, which is also worth repeating: "...the close association of the Dissenters with trade and industry is significant. Those who broke away from authority in the religious sphere would be more inclined to take up an independent attitude in the economic sphere. Freedom is a thing of the spirit, and the intimate relation between its different forms of expression--political, religious and economic--is not accidental" (footnote 1, cxvii).

[1] Industry and Government in France and England, 1540-1640 (Philadelphia, 1940).

> the excess of straining cannot be certainly limited by any law, but must be left to the Seller's or Exporter's discretion, who best knows what will please his Customers beyond the Seas.[1]

This new spirit that "industry has its first foundation in liberty" had, among other things, enormous implications for the common law. At no point were the conflicts and tensions introduced by this spirit revealed with such dramatic clarity as in the sphere of corporation law. The laws, royal charters, ordinances and customs of the corporation had historically controlled and determined the character and domain of economic activity. The burning question emerging during Elizabeth's reign was Who finally defines a corporation and the nature of its behavior: the crown? the common law courts? or the entreprenuer himself? In other words, was economic activity to be organized and regulated by political purposes, by legal conceptions or by autonomous economic considerations? The tentative answers arrived at were by no means unambiguous or unconfused. Within the common law itself conflicting attitudes and frames of reference are to be found. In fact, it is one of the theses of this essay that the confusions and ambiguities revealed in the legal thought of the time, and reflected particularly in the opinions of Edward Coke,[2] cannot properly be understood apart from the deep-seated antagonisms between Anglicanism and Puritanism, and the divergent logics of order they represent.

On the one hand, it was Coke who, in case after case, decided

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1. Quoted in W.J. Ashley, The Economic Organization of England (London, 1923), 162.
2. Coke's role in corporation law is very important. "The conception of corporations at the foundation of the modern law of them matured in England in the fifteenth and sixteenth centuries and found its chief expounder in Sir Edward Coke." John P. Davis, Corporations, ed. by Abram Chayes (Capricorn Books, 1961), II, 210. The two original volumes are brought together in this edition, though the pagination remains the same.

against the restriction of trade, against the long-existing political and economic controls, and at once encouraged and reflected the emergence of new values and a new conception of social order.[1] It was he, who, like so many of his fellow jurists, embodied a predisposition "to disallow any extention of restrictive practices to the new (economic) conditions which were developing on every side."[2] The impulses within legal thought toward a spirit of free and autonomous economic activity, untrammeled by the traditional legal and political restraints, manifests a "rich congruence" with some of the conclusions that emerged from the Calvinist-Puritan logic of order. The heart of Puritan thought rested in its advocacy of a new basis for obedience and a new form of authority. Out of its Calvinist heritage, it introduced a conception of social life with profoundly disruptive implications for English society, a conception that had specific affinities with the development of economic independence.

On the other hand, it was the same Coke who tried, almost obsessively, to find a basis for these decisions in the feudal traditions of English corporation law, and to harmonize his revolutionary "Elizabethan ideas" with remnants and vestiges of medieval group life. Holding a point of view that understood man to be living in a legal universe in which the present and future were wedded to the past by a smooth continuity of omnicompetent law and custom, Coke vainly searched the ancient legal texts to discover a foundation for new patterns of life which called into question the very validity of his legal universe. That he did not and could not find such a foundation did not prevent him from unconsciously disguising his innovations in the 'clothes of the past.'[1]

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[1] As S.E. Thorne in his published lecture delivered to the Selden Society in 1952, "Sir Edward Coke, 1552-1952," remarks: "I need hardly point out that 'liberties' in Magna Carta is the equivalent of 'immunities and franchises' and that ideas about free trade were Elizabethan ideas, not those of the barons petitioning King John." (10)

It is of the utmost significance that Thorne, one of the leading Coke scholars, undertakes in an important general lecture regarding Coke's legal contribution, to examine precisely the antinomies and tensions involved in his decisions over corporations and free trade that we have referred to. The point is that these tensions are not incidental or of secondary or random interest. They are indispensable to understanding what was central in the legal activity and thought of the day. They characterize Coke's creative, innovative function with regard to the law.

[2] Lipson, op.cit., II, cxxxv.

In this passion for antiquity, Coke was strikingly close to Richard Hooker's theology of the 'old order,' and to the logological presuppositions of Elizabethan Anglicanism.[2] The metaphysical defense of a legal universe, with all of its rational stability, harmony and consistency, could hardly be clearer than in Hooker's *Laws of Ecclesiastical Polity*. For Hooker, all corporate life (including economic action) is regulated and defined by an unvarying, omnicompetent 'law of the realm.' It is

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1. *Ibid*., 10.
2. Personally, Coke remained an Anglican his whole life, although he states that he regarded the Presbyterian Puritans the "least dangerous" of the other religious groups in England. Several of Perkins' pamphlets were dedicated to Coke, indicating that the great jurist was not without esteem in Calvinist circles. Coke, and other common lawyers, sided with the Puritans on *ex officio* cases, though not too much can be made of that, it seems to me. This was one critical point where the lawyers could resist the 'encroachments' of the prerogative courts (see Ronald A. Marchant, *Puritans and the Church Courts in the Diocese of York, 1560-1642*, London, 1960). It must be remembered that Coke himself would never have admitted that attitudes akin to the Puritans' were at work in his legal thinking. He was convinced that all his reasoning was based on the logic of the past, and in that he stood squarely with Hooker and 'official Anglicanism.' For that very reason, it is all the more surprising to find embedded in his thought values so like those emerging from the Puritan logic of order. Our main concern in this essay is simply to show the 'congruence' of a *theological* conflict between two groups, with a *legal* conflict within one man (or group of men, since, as we shall make clear, 'Coke' represented more than himself in the formation of common law). See Chapter IV.

the affinities between the legal thought of the time and the Anglican theology that need exposition, so as to clarify the logic of Coke's desperate adherence to the 'old order' in face of his unwitting encouragement of the 'new.'

The implications of these two theological systems--Puritanism and Anglicanism--sharply oppose one another, particularly in Coke's legal activity with respect to corporations. There, as in the more formal doctrinal disputes, the logics of the respective positions collide head-on in a 'conflict of order.' That conflict pits a picture of an harmonious, totally self-consistent legal universe against a dynamic conception of social change that envisions a new society living by a new law.

In the final chapter, therefore, we shall examine in some detail the dimensions of this conflict in Coke's interpretation of corporation law, and we shall attempt to fit these dimensions into the wider framework of his 'legal theory.'

Let us summarize our overall intentions in this essay: we are concerned, in the first place, to elaborate a method for demonstrating the Eigensetzlichkeit of theological-ethical language, i.e. to show that it follows consistent, independent patterns. We hope to indicate that this is a useful method for perceiving important elements both of coherence within one theological system (Calvinist-Puritan), and of contrast between two systems (Puritan-Anglican).

In the second place, we are concerned to relate these independent theological systems to the dynamics of secular legal activity. We wish to discover the extent to which it is meaningful to speak of 'congruence' between patterns of theological thought and certain patterns of social action.

Chapter I: THE NEW ORDER OF JOHN CALVIN

"Ecclesia reformata semper reformanda"

If the language and thought-forms of the Puritans follow coherent and 'logological' patterns, the key to understanding those patterns is, to a very large extent, Calvin's theology. It is his theology that sets forth the groundrules and basic orientations of Puritan thought; it is a kind of grammar for Puritan rhetoric.

But if Puritanism and particularly Elizabethan Puritanism is not adequately apprehended except in contrast to the official Anglicanism of the day, Calvinism is little better understood apart from the Renaissance humanist context in which it was produced. In fact, the remarkable coherence between Calvinism and Puritanism is more readily apparent in the light of their common antagonism to certain presuppositions that both Renaissance and Anglican thinkers seem to share. In order, therefore, to reveal as sharply as possible the distinctiveness of the logic of Calvinism, we begin with a brief survey of some of the characteristics of Renaissance humanism to which Calvin was so strongly opposed.

However much humanism was at bottom a method of literary investigation rather than a unitary philosophical point of view, there is no question that it embodied important philosophical biases.[1] Prominent among these, and one that was particularly attractive to Calvin in his early career as a humanist, was the bias in favor of late classical

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[1] While P.O. Kristeller in Renaissance Thought: The Classic, Scholastic and Humanist Strains (Harper Torchbook, 1961) makes this point very persuasively, he concedes that "Renaissance humanism had important philosophical implications and consequences." 22.

Stoicism, particularly as found in the thought of Seneca.[1] The notion of an organic *humanitas* or *societas hominium* regulated by one overarching, all-pervasive natural law that is manifest in man's universal reason characterizes the writings of such humanists as Ficino[2] and Budé,[3] and, to a lesser extent, such legal thinkers as Alciat and Zasius.[4] The Stoic roots of this thought are clear. Marcus Aurelius asserts quite typically:

> If the intellectual part of us is common to all, so also is the reason which gives us our status as human beings. Grant this and the (practical) reason which bids us do or not do must also be common. Hence it may be concluded that there is but one law; and, if the law be one, we are all fellow-citizens and members of one body-politic; that is to say, the universe is a species of the state. For what other conceivable community can there be of which it may be said that the whole human race are citizens? And from this universal state must proceed those very faculties of intellect and reason, together with our concept of (natural) right.[5]

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[1] Calvin's first essay, "De Clementia," was a treatment of Seneca. Lord Acton, *Lectures on Modern History* (Meridian Books, 1961). See his lecture on "The Renaissance," esp. 79-80. See also Leontine Zanta, *La Renaissance du Stoicisme au XVIe Siecle*, (Paris, 1914).

[2] Kristeller, *op.cit.*, 132-133: Kristeller quotes Ficino: "For as Individual men are under one Idea and in one species, they are like one man. Therefore, I believe, the sages called by the name of man himself only that one among all the virtues that loves and helps all men as brothers deriving in a long series from one father, in other words, humanity." (*Opera*, 635) See also Kristeller, *The Philosophy of Marsilio Ficino*, 279.

[3] The classic work on Budé in which he is compared exhaustively with Calvin is Josef Bohatec's *Budé und Calvin* (Wien, 1950).

[4] C.J. Friedrich, *Die Philosophie des Rechts in Historiker Perspektive* (Berlin, 1955). See esp. the chapter on "Das Recht als Geschichtsphänomen: Die Humanisten." Friedrich argues that the Stoic influences were there but growing weaker under the relativizing impact of nationalism and historicizing reason. The ruler came to be seen as above the law (a conception one finds also in Cicero). He does go on to say, however: "Für die Humanisten gilt ausgesprochen der Gedank, dass es ein Recht gibt, das für alle Menschen gültig ist. Ist er ja doch im Wesengrund des Humanismus verankert." (33)

[5] *Meditations*, iv. 4. Quoted in C.N. Cochrane's study, *Christianity and Classical Culture* (Galaxy Book, 1957), 166. We are indebted to this

In this Stoic system, 'God' is identical with the universal order of things.[1] He is apprehended when human reason grasps the true rational

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book for opening up the implicit tensions between the conception of order in classical thought and that in Christian (especially Augustinian) theology. Cochrane supplies a rich basis for logological analysis. We are carrying the theme further with respect to Calvin.

It might be argued that Cochrane is a bit Idealistic in that he rather exclusively attributes the fall of Rome to the deficiencies of classical thought. However that may be, his analysis of the dimensions of order in classical thought is extremely helpful and very convincing.

[1] One of the most perceptive examinations of the place of natural law in Stoic thought of the "Spätantike" is to be found in Felix Flückiger's *Geschichte des Naturrechts* (Zürich, 1954). Flückiger makes the identification between God and the natural order clear: "Die Identifikation von Gott und Natur erlaubte ihr, die Qualität des religiösen Gottesbildes auch auf die Natur und deren Gesetz zu übertragen; deshalb war der Schluss gestattet, die lex naturae sei sittlich vollkommen wie Gott." (205) "Wie alle Stoiker, vertritt Seneca einen streng deterministischen Vorsehungsglauben. Die Vorsehung ist das ewige Gesetz Gottes, die lex aeterna (die gleichbedeutend ist mit dem Naturgesetz). Denn weil Gott alles vernünftig und zweckmässig und gemass dem Ziel der Vollkommenheit des Weltganzen wirkt, kann er nicht so oder anders handeln, sondern er muss alles so beschliessen, wie es dem Zwecke der Vollkommenheit entspricht. *Seine Freiheit wird daher zur Notwendigkeit.*" (217-218, italics supplied). It is, of course, hard to generalize about a movement like Stoicism, which encompassed many centuries in its developement. Flückiger's concern, like ours, is with the late classical period of Seneca, Marcus Aurelius, etc.. We wish to emphasize, with Flückiger, the reasons for the lack, in late Stoicism, of a conception of 'new order' that could find institutional roots in society. Our brief analysis applies especially to the thought of Seneca, Epictetus, Marcus Aurelius and Poseidonius, and certain qualifications would, no doubt, have to be recorded with respect to a figure like Cicero. Cicero's attempt, for example, to explain human evil as the consequence of bad custom implies a certain revolutionary zeal that must not be overlooked. On the other hand, as Flückiger points out, *De Republica* is an argument in favor of the *established*, or *given*, order of "eternal Rome." Flückiger says: "Die Iustitia civilis Roms ist die Iustitia naturalis. Mit diesem Ergebnis hat das Werk seinen sachlichen Höhepunkt erreicht, und die folgenden Bücher dienen...im wesentlichen nur noch der Darstellung und Rechtfertigung der römischen Sitten und Rechtsordnungen." (232) For Cicero the "eternal Rome" became the criterion for an adequate political and legal constitution. It would seem, therefore, that there are important inclinations toward the 'old order' in Cicero as well as in Seneca, though our conclusions with regard to Cicero can only be very tentative.

coherence (the logos) of the world.[1] Consequently, the ethical demand for obedience is derived from the order of nature. Man is commanded to conform to what is. From a logological point of view, the command and the structural or organizational dimensions of the word 'order' are completely equated, a fact of the greatest importance for the Stoic view of social action. Because man in ethical obedience can only adjust to the inexorable, eternal law of nature, there is no room for real disorder, nor, therefore, is there any kind of basis for a reordering of things. There is, in other words, no place for genuine evil, nor for its overcoming, as Seneca makes clear:

> ...Wie unzutreffend die Vorstellung ist, dass das, was ein Übel scheint, es auch wirklich ist. Zunächst behaupte ich, dass das, was du als hart, als widerwärtig und abscheulich bezeichnest, erstens nur zum Besten derer diene, die davon betroffen werden, sodann zum Besten der Gesamtheit, deren Wohl den Göttern mehr am Herzen liegt als das des Einzelnen, ferner, dass es im Einklang mit ihrem Willen geschehe und dass sie das Unglück verdienen, wehn das nicht der Fall ist. Dem soll dann der Nachweis folgen, dass dieser Lauf der Dinge ein Werk des Schicksals sei und sich für die Guten nach genau demselben Gesetze vollziehe, nach welchem sie selbst gut sind. Endlich will ich dir klarmachen, dass du niemals einen tugendhaften Mann bemitleiden darfst, denn wohl kann er unglücklich genannt werden, aber sein kann es nicht.[2]

This central teaching has not been taken seriously enough by scholars who too simply speak of parallels and similarities between Stoicism and Christianity.[3] While Stoics such as Seneca and Poseidonius did speak of a primitive golden age which they regarded as superior to their contemporary society, it could not--by the logic of their system--provide them with any kind of model for reform.[1] Each period was but another inevitable stage in the eternal predetermined cycle of history.[2] "The condition of nature in the primitive time is, accordingly, not a natural law norm for the present; rather it lies in the past like Hesiod's 'golden age.' The subsequent change (from that time to the present) occurred not without the will of providence and corresponds to the natural

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[1] *Ibid*., 217.

[2] Seneca, *De Providentia* 3. Quoted in Flückiger, *op.cit*., 199.

[3] G.H. Sabine in his widely used *History of Political Theory* (London, 1959) is clearly guilty of such a facile comparison. While there are undeniable similarities, the common over-emphasis of them hopelessly misses the deep-seated differences precisely at the point of 'order.' The Stoics possessed no grounds for a 'new order' and therefore Seneca's interpretation of the "two commonwealths," (159) unlike the

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Christian conception, could not receive any institutional or social expression. The profound conflict between civic and ecclesiastical duties evident in one way or another throughout the history of the Christian church, in no way bothered the Stoics. As regards the conflict between the two commonwealths, Sabine himself admits that there "is no evidence that Seneca was aware of (it)." (164) That is certainly *not* accidental.

However, Sabine makes a statement the extreme importance of which he himself does not understand in much of his analysis of the relation of Christian thought to political theory: "The rise of the Christian church, as a distinct institution entitled to govern the spiritual concerns of mankind in independence of the state, may not unreasonably be described as the most revolutionary event in the history of western Europe, in respect both to politics and to political thought." (161-162) We would underscore that statement several times.

[1] Flückiger says: "Jedes Zugeständnis, dass etwas nicht sein sollte, wie es ist, müsste Zweifel an der Vernünftigkeit und Göttlichkeit der lex aeterna wecken und damit an die Grundlagen der stoischen Weltansicht oder Reform... Sie lehrt die Menschen, das Los, das ihnen beschieden ist, als göttliche Fügung hinnehmen und allen Widerwärtigkeiten mit unerschütterlicher Ruhe des Gemütes standhalten. Der Kaiser Marc Aurel und der Sklave Epiktet unterscheiden sich nicht voneinder in ihrer Einstellung zu dem Schicksal, das ihnen auferlegt ist. Beide sind überzeugt, dass man das angenehme und das Schwere dankbar aus Gottes Hand annehmen muss, weil es im Leben ja nicht auf die aüssern Dinge ankommt, sondern allein auf die rechte Gesinnung, und dass die Güte der Vorsehung alles wohlgeordenet hat... So hatte die Stoa wohl einen mächtigen Einfluss auf die individuelle Vollkommenheitsethik, aber in Hinsicht auf das soziale und politische Leben ging eine lähmende Wirkung von ihr aus." (200-1)

Flückiger (201-02) and Cochrane (162-63) both argue that the various forms of political demogoguery and hypocrisy perpetrated by Seneca and Cicero on the Roman people were not simply the result of personal ambition, but fit squarely into their fatalistic views.

[2] *Ibid.*, 199-200.

law of becoming and passing away."[1]

Out of this complete identification of 'ought' and 'is' in Stoic thought arises what Flückiger calls a "fatalistische Gesinnungsethik." The individual becomes concerned with conforming to the order of reality, but it is basically a matter of inner disposition. So far as outward action is concerned, he is a member of no social or institutional context that stands over against the way things are. There is no new command demanding a new order. The individual's obedience always refers back to the old structure of things, never forward to something revolutionary or transforming. In Cochrane's words, the Stoic "failed to build a bridge between 'order' and 'process'; one main result (was) that whatever did not fit in with the preconceptions of its ideal order was denied or dismissed as 'unreal.'"[2]

The manner in which Renaissance humanism sought in the old order of classical antiquity the sources of true thought and action illustrates its affinity with the Stoic logic of order. For while the recovery of classical thinking resulted in important intellectual innovations in the 14th, 15th and 16th centuries, very little use was made of the revived thought toward any genuine social reorientation. In general, humanists such as Erasmus, Budé and Ficino were much more concerned to retreat into an *arriereboutique* to contemplate the essence of universal humanity and to cultivate their inward rational relationship to it than to reform the structure of things. It is one of the striking features of the Renaissance, whose spirit and conclusions were usually in such direct contra-

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1. *Ibid*., 217.
2. Cochrane, *op*.*cit*., 166.

diction to the scholasticism of the Roman Catholic church, that so much intellectual activity went on with so little social effect. As Troeltsch has remarked with almost[1] complete accuracy, "the Renaissance, from a sociological point of view, was fully unproductive."[2]

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[1] Was not the political thought of Machiavelli and Guicciardini a significant Renaissance contribution to social life? The answer seems to be no. It is easy to understand why Machiavelli's influence on political thought has been greatly exaggerated (as J.W. Allen, *op.cit.*, 492, points out), when one observes how really irrelevant and 'academic' Machiavelli's thought was precisely because of the fact that he was so rigorous a humanist! As Herbert Butterfield shows in his excellent book, *The Statecraft of Machiavelli* (London, 1960), Machiavelli's thought contains perhaps "the most typical features in Renaissance theory on the subject of the past." (28) For him, "the world throughout the centuries remains essentially the same." (30) His political thought consisted in attempting to recreate, in the present, 'ideal' situations that occurred in classical antiquity. "He is simply a channel for classical influence," (81) hardly a 'modern' political thinker in any sense. As Butterfield demonstrates, his thinking suffers deeply from having no understanding of history, nor appreciation of the 'new.' Of course, it must be said that, unlike most other Renaissance figures, Machiavelli attempted to form contemporary life along the lines of classical antiquity. However, his attempts were hardly very edifying. In the same vein, Cochrane calls Machiavelli "a romantic visionary, quite as much out of touch with the needs of his day as was Julian the Apostate with those of his." (!) (*Op.cit.*, footnote 2, 96). Guicciardini, who is caustically critical of Machiavelli just at the point of the latter's wooden application of the past to the present may well be the more significant political thinker, though it is impossible to tell, for he left us only fragments of his thought. For this reason alone, he could hardly be called very decisive in the realm of political thought.

[2] Ernst Troeltsch, "Renaissance und Reformation," *Gesammelte Schriften*, IV (J.C.B. Mohr, 1925), 276. He continues: "Sie ist anarchistisch und aristokratisch in ihren engsten Kreisen und lehnt sich im übrigen an die bestehenden Mächte in Staat und Kirche völlig unselbständig an. Sie schafft soziologisch die Bildungsaristokratie und den Salon und huldigt im übrigen der Macht und der Gewalt."

In the same vein, Lord Acton remarks (*op.cit.*, 85-86): "...but on the whole the contract (between the Roman Catholic church and the humanists) was observed, and the ancient pagans made their way under the shadow of St. Peter's better than the early Christians. Humanists of the type of Valla were domesticated by the prizes held out to them, from the pen of the secretary to the tiara of the pontiff." "The main fact in the Italian Renaissance is that an open conflict was averted at the cost of admitting into the hierarchy something of the profane spirit of the new men, *who were innovators but not reformers*."

How could it be otherwise when in humanism, as in Stoicism, social life was but a manifestation of the recurring, inexorable *ordo naturae* in face of which no break, no transformation is possible? As with their Stoic ancestors, the humanists' ethical activity was determined by the way things are. Any contemplation of a 'new heaven' and a 'new earth' was, by the logic of their understanding of life, ruled out as nonsense. Any radical pattern of behavior that called into question existing patterns was excluded for the same reason.

With John Calvin, it is quite another story. Although his thought manifests affinities with humanism and Stoicism,[1] his logic of order leads him in a totally different direction. For him, the two dimensions of the word 'order' (command and structure) are not equated or identified with one another, as in Stoicism. They are distinct aspects that find their relationship in "God" who is 'above' them both. It is *God* who commands *and* structures all things by reason of his Sovereign will, which is "the highest rule of justice," and the "highest standard of perfection, even the law of all laws."[2] The implications for social life--for the enunciation of a 'new command' issuing in a new set of social relationships that stand over against the 'old order'--are immense in Calvin's system.

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[1] Besides Bohatec, many scholars have treated the Stoic and Humanist backgrounds of Calvin's thought. For example, Erik Wolf, "Theologie und Sozialordnung bei Calvin," *Archiv für Reformationsgeschichte*, 42 (1951), 11-31. Quirinius Breen, *John Calvin: A Study in French Humanism* (Grand Rapids, 1931). Gisbert Beyerhaus, *Staatsanschauung Calvins mit besonderer Berücksichtigung seines Souveränitätsbegriff* (Berlin, 1910).

[2] *Institutes* III, 23, 3. (We are using John Allen's translation of the *Institutes* in two volumes, Philadelphia, 1936. All references to the *Institutes* hereafter will be indicated by a roman numeral for the particular book, followed by two arabic numerals indicating the chapter and section.) In Stoicism, the structure of things dictates the command--there is a *necessary* relationship between them. In Calvin, command and structure are *freely* united in God's sovereign Will.

The study of Calvin will be divided into two main parts, under the headings, I. "Sovereignty and Law" and II. "Sovereignty and Society." We shall in III., "Sovereignty, Eschatology and Society," attempt briefly to summarize our conclusions. Following the logological outlines sketched in section II. of the Introduction, we shall examine Calvin's theology in relation to the 'order-disorder-obedience-disobedience' configuration of interdependent terms. We shall treat, in turn, the command-dimension and the structural-dimension of the key word, 'order.' Section I will, therefore, be an examination of Calvin's theory of law, and Section II an examination of his theory of social relations. As in the word 'order' itself, both dimensions shade into one another, and they are never absolutely distinguishable. Still, for analytical purposes this is, we believe, the most manageable approach.

I.

Sovereignty and Law

God's Command and the Moral Law (The First Use of the Law)

> Thence we shall learn that God, by the power of his Word and Spirit, created out of nothing the heaven and the earth; that from them he produced all things, animate and inanimate; distinguished by an admirable gradation the innumerable variety of things; to every species gave its proper nature, assigned its offices, and appointed its places and stations.[1]

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[1] Comm. on Ps. 8:4. (Nearly all of the references to Calvin's Commentaries are taken from the English edition published by Calvin Translation Society, Edinburgh.) "The verb, at the close of the third verse, which others translate "to prepare," or "to found," or "to establish," I have thought proper to render 'to arrange.'"

It is by the 'unfathomable might of his Word' that God commands into existence the heavens and the earth and all things that exist therein.[1] God's Command establishes the beautiful arrangement of the universe[2] in which "all things" testify to his authority.[3] His Command goes out and "all things" obediently respond, whereupon they assume their proper places and live harmoniously by the laws and decrees of the universe. By this orderly, obedient response God is honored and praised.[4]

It is for man that the whole world is principally made.[5] He is the one who crowns the creation,[6] and upon whom rests, in one sense at least, the responsibility for preserving the beautiful arrangement. Calvin interprets the word "fulness" in Ps. 24:1 to mean "men themselves, who are the most illustrious ornament and glory of the earth. _If they should fail_, the earth would exhibit a scene of desolation and solitude, not less hideous than if God should despoil it of all its other riches."[7] In terms of our analysis of order, man is so central in Calvin's theology because man alone can obey or disobey God's Command. No other creature possesses that possibility. The image of God in man exists when God "mirrors" himself in man, that is, when man, in due submission to the majesty of God, reflects the order ordained by God.[1] When man is obedient, he is in harmony with society and nature and within himself.[2]

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[1] CR 31, 328; I, 14, 20. (All references to the _Corpus Reforatorum_ are indicated by CR, and followed by the volume and page number. These references are taken from the edition edited by G. Baum, E. Cunitz and E. Reuss: _Corpus Reformatorum, opera quae supersunt omnia_ (Brunsvigae, C.A. Schwetshke and son).)

[2] Comm. on Ps 68:34.

[3] Comm. on Ps 104:4.

[4] It is important to note for purposes of later analysis that Calvin identifies Jesus Christ not only with God's 'Word' of Redemption, but also with his 'Word' of Creation (Comm. on Col 1:15, 16; cf. Comm. on John 1:3). Thus, for Calvin Christ is the creative and redemptive expression of order. I, 14, 20.

[5] Comm. on Ps 24:1.

[6] Comm. on Book of Moses, Gen. 1:26.

[7] Italics supplied.

But man is disobedient. The Fall occurs precisely because Adam "takes no account of the Word of God."[3] A "fearful deformity" results both within man, so that the image is "wholly defaced and wiped out,"[4] and outside man, so that he loses his proper place within creation, and "la terre a été maudita à cause d'Adam."[5] Nature, society and man, thus "twisted" (*déjeter*) by Adam's disobedience, are subjected to confusion and total perversity.[6]

There is, of course, a vestige of God's *ordo naturae*[7] left remaining. Even Adam's rebellion cannot fully shake the security of God's Providential Order. It is God, after all, who is sovereign, not man. An 'external image of righteousness' still exists in man's reason and consicence by means of his perception of the natural law. But these faculties are at best tarnished tokens, for their intrinsic ambiguity demonstrates as much the deficiencies of human nature as the blessings. The "seeds of political order" that are "sown in the minds of all," the power of the conscience to discriminate "what is just and unjust," along with man's natural rational gifts in art, science and philosophy, continue to reside in man by the mercy of God, even though human nature "has been despoiled of what is truly good."[1] "Had it not been for his mercy to us, our defection would have been followed by the total destruction of our nature."[2] Man's disobedience should, by all rights, lead to total disorder, but he cannot completely avoid the Command of God. He is driven to live up to a minimal standard of civil harmony and justice[3] which is derived from certain binding legal and moral principles. These principles are made clear and sharp in the Decalogue or the "moral law" which is "no other than a declaration of natural law, and of that conscience which has been engraven by God on the minds of men..."[4] The apprehension of the natural-moral law by reason and conscience ought to excite man to acknowledge God as the author of order and the source of the Command.[5] For despite his recalcitrance, the Command ever and again drives him back to the authority of God himself.

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[1] T.F. Torrance, *Calvin's Doctrine of Man*. (London, 1952), 51.

[2] "There was an attempering (*temperature*) in the several parts of the soul, which correspond with their various functions. In the mind perfect intelligence flourished and reigned, uprightness attended as its companion, and all the senses were prepared and moulded for due obedience to reason; and in the body there was a suitable correspondence with this internal order." (Comm. on Gen. 1:26)

[3] Comm. on Gen. 2:9.

[4] Serm. on Deut. 24:14.

[5] Comm., on Gen. 3:17.

[6] CR 22, 36, 7.

[7] There is no question that Calvin incorporated into his thought basic humanistic, especially Stoic, ideas about an *ordo naturae* and its moral implications. But Calvin alters the conception decisively. See below.

At the same time as the natural-moral law, at work in reason and conscience, prods man to live up to the Command of God, it convicts him of his own wilful rejection of the Command and of his own inability to obey it. It is what we may call this "double function" of the natural-moral law that injects an ambiguous and dynamic element.

> The Lord accomplishes both these things in his law, where in the first place, claiming to himself the legitimate authority to command, he calls us to revere his Divinity, and prescribes the parts of which this

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1. II, 2, 15.
2. II, 2, 17.
3. II, 2, 13.
4. IV, 20, 16.
5. II, 2, 14.

> reverence consists; and in the next place promulgating the rule of his righteousness (the rectitude being depraved and perverted, perpetually opposes; and from the perfection of which, our ability, through its indolence and imbecility towards that which is good, is at a great distance) he convicts us both of impotence and unrighteousness.[1]

The first table (of the Decalogue) establishes the sovereign authority of God to command, which ought to result in humility and worshipful obedience on the part of man. Without man's heartfelt recognition of God's authority, the law is already disobeyed and God's order broken. Therefore, the second table, which drives in the direction of the proper or 'righteous' structure of social relations (the corresponding dimension of 'order'), convicts as well as guides man. While external degrees of harmony, or "human laws" can be maintained, "they are destitute of the principal requisite of the law...(namely) that the 'law is spiritual.'"[2] Thus, the Command of God "accuses us when we deviate from our duty;"[3] it drives home a "consciousness of guilt," a sense of disobedience.[4] As Calvin remarks in unequivocal terms, "the end of the law of nature, therefore, is, that man may be rendered inexcusable."[5] The natural-moral law drives man, according to the first use of the law, "to implore the assistance of God."[6]

In contrast to Stoic and humanist conceptions, Calvin subordinates natural law to the sovereignty of God. There is no law above or outside

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[1] II, 8, 1.
[2] II, 8, 6.
[3] II, 8, 1.
[4] II, 2, 24.
[5] II, 2, 22.
[6] II, 7, 9. See also II, 2, 22 for an emphasis upon the inescapably compelling character of the law as it drives home its conviction.

God: "Dieu est par dessus l'ordre de nature."[1] That is to say, logo-logically, that the Command of God directs the obedience of man to something 'higher' than itself, namely to the 'free will' of God as the source of order. Therefore, God is only obeyed by man's voluntary response, a response in which man's free will 'mirrors' the freedom of God. Short of such obedience, the natural-moral law can simply compel and convict, but it provides no basis for genuine or complete coherence in itself. It can but 'mirror' the servitude under which man lives so long as he lives apart from the sovereign Grace of God. What Beyerhaus refers to as the 'moment of voluntarism'[2] is of the greatest significance in Calvin's logic of order, as we shall see with increasing force as we go along. Whatever superficial similarities obtain between Calvin and the Stoics regarding natural law are obviated by the profound difference at this point.

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[1] CR 62, 432. Cf. also 64, 29: "nec aliud esse naturae ordinem, quam obsequium quod ei a singulis mundi partibus redditur, ut summum eius imperium ubique refulgeat." Quoted by Beyerhaus, op.cit., 72. He concludes "dass die Ordnungen des Naturrechts keineswegs als eine rechtliche Selbstbeschränkung des göttlichen Machtwillens aufgefasst werden dürfen. Die Erhabenheit über den ordo naturae bzw. das ius naturae erscheint vielmehr als ein entscheidendes Merkmal der göttlichen Souveränität."

Richard Hauser in his Autorität und Macht (Heidelberg, 1949), 346, makes the same point: "Gottes Wille untersteht weder einem anderen Massstab, noch ist er irgendwoher abzuleiten, vielmehr steht er in sich selber."

[2] A.P. d'Entreves, in his Natural Law: An Introduction to Legal Philosophy (London, 1960), mentions the relation between 'nominalist' or 'voluntarist' theories of law and 'voluntarist ethics,' for example in Calvin, 68-70.

For a discussion of 'voluntarist ethics' in the Reformation, see G. de Lagarde, Recherches sur l'esprit politique de la Réforme (Paris, 1926).

The influence of Duns Scotus on Calvin is a highly debatable matter, and transcends the scope of this essay. Both Beyerhaus and Bohatec persuade me that it was by no means direct.

God's Command and the Positive Law[1] (*The Second Use of the Law*)

> Cognoissons donc que non sans cause Dieu a establi l'ordre de justice terrienne: mais qu'il a regardé à la corruption qui est en nous. Nous sommes bien admonestez par cela, comme i'ay desia dit, de nous humilier, voyans que nos vices requierent une telle medecine. Mais tant y a que nous devons magnifier la bonté de Dieu, de ce qu'encores il à voulu provoir à ce que tout n'allast point en confusion, que nous ne fussions point deseperez: ce qui adviendroit quand tout seroit licite.[2]

"L'ordre de justice terrienne," including the political order and the institution of positive law, is decidedly occasioned by human disobedience. Calvin is clear that "Si nous estions demeurez en integrité de nature, telle que Dieu l'avoit creee; l'ordre de justice qu'on appelle, ne seroit point tant requis."[3] Men before the Fall responded obediently to the Command of God, in the full sense, so that "...*chacun porteroit la Loy en son coeur*."[4] Before the Fall, the Command of God was obeyed from the heart, and consequently there was an "integrité de nature." But as the result of disobedience, the Command, which in its original freedom solicits but does not coerce, becomes the order of God in a coercive and binding sense. The social structural frame of order changes from a 'self-integrating' system to a system ruled by "la police terrienne." The principles of righteousness must now be realized through force.[5] While political and legal institutions clearly flow, in

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[1] The following statement of Beyerhaus fits squarely into our overall methodology: "Bei letzerem unterschieden wir zweckmässig die Souveränität Gottes in der Theologie (d.h. in ihrem religiös-sittlichen Wesen) und in der Staatslehre (d.h. in ihren staatlich-politischen Wirkungen); wir müssen uns indes bewusst bleiben, dass *für Calvin Religion und Staat nur ein verschiedener Ausfluss aus einer gemeinsamen Quelle waren*." (*Op.cit.*, 50, italics supplied.)

[2] CR 27, 409.

[3] *Ibid.*

[4] *Ibid.*, italics supplied.

[5] Bohatec, *Staat und Kirche*, 23.

Calvin's thought, from the Will of God and are certainly part of his order, their coercive and restraining office may not be said to be 'natural' or originally necessary. There is a decided change in the nature of God's order after the appearance of sin.[1]

The state in Calvin, as a law-making and law-enforcing body, is by no means invented by men. Nor does it simply[2] arise from some natural capacity for political order man possesses innately. It is first and foremost a theological entity, and it falls squarely under the aegis of Calvin's "passion for order."[3] It is ordained and established by God for the maintenance, at all costs, of his Providential Design. Consequently, political rulers are the product of God's gracious election; he bestows upon certain men (for example, the Kings in the Old Testament) his holy spirit and sets them aside with "special marks" as "sons of God."[1] The rulers are the servants of God, charged with creating and maintaining order on behalf of God. They are to perform their duty in the knowledge that all power stems ultimately from God, and were he to withdraw his Hand, no order could exist.[2]

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[1] After the Fall, "die Menschen ein Wesen angenommen haben, das an Unbändigkeit der Leidenschaften die wilden Bestien noch übertrifft, ist im Staat ein Heilmittel gegeben, ein remedium gegen eine 'rerum omnium perturbatio et mutua aliorum in alios, ferarum instar, laniatio.'" (CR 57, 583f) (Beyerhaus, op.cit., 131-2.)

One sometimes hears that Calvin looked positively, not negatively, on the state--it is the result not so much of sin as of providence. For example, Calvin states in IV, 20, 4: "This is just as if it had been affirmed, that the authority possessed by kings and other governors over all things upon earth is not a consequence of the perverseness of men, but of the providence and holy ordinance of God..." The fact is --we shall make it clear as we proceed--that for Calvin political life and positive law have a 'double function,' corresponding to the double function of the natural law. On the one hand, they propel men in the direction of harmony and integration, and away from that condition in which men "tear everything to bits" (lanatio). Therefore, those persons who stand in authority naturally hold positions that are "not only holy and legitimate, but far the most sacred and honorable in human life," (IV, 20, 4) just because they are specially related to God's order. On the other hand, they stand, by their inevitable use of coercion and force, as an abiding indication of the rebelliousness and disobedience of the disorder of man. This double function is fundamental to Calvin's thought. Because the logic of order, of which it is the result, is overlooked, it is frequently neglected.

[2] Though Calvin does concede that there is a 'natural' drive toward political life, II, 2, 13.

[3] This is Bohatec's suggestive term: Pathos der Ordnung, das Recht, 62.
cit., 62.

Because of the 'divine right' by which the authorities rule, there is a fatherly relationship between them and their subjects corresponding to the relationship between God and man. In one sense, the political authority represents God. The subject submits to the ruler, prince or magistrate "certainement cela se fait par une impulsion et instinct divin; c'est Dieu qui à inspiré aux hommes cette crainte sans laquelle il est certain qu'ils ne se soumettraient jamais."[3] God's original order (command and social structure) has been provisionally translated into a coercive order, maintained by God's chosen authorities, so that God's sovereignty will prevail over man's disobedience. Given Calvin's presuppositions, this is a logological necessity. Were man to 'have the final say' regarding order and disorder, that is, were his 'no' allowed to take precedence over God's order, God would no longer be 'God.'

At the same time, it is just this necessity which injects the element of coercion into political life, and which, from a logological point of view, means that politics and law can only be associated with the 'old order.' As long as there is a *necessary* or *compelling* connection between command and structure, as there is in the civil political-legal sphere, God is not fully sovereign (in the eschatological sense), nor is man fully

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1. CR 35, 160; 163, 579; 27, 128, 467, 511; 29, 617.
2. Bohatec, *das Recht*, 30.
3. CR 29, 660.

free. Because of man's inordinate disobedience which at all times threatens total anarchy, the political ruler, in order to protect the sovereignty of God's order, *must* stay in power. He must give binding commands that will maintain and protect his rulership. The commands derive from the necessity of his retaining power. His final earthly control over 'force,' 'coercion' or 'compulsion' results directly from this 'compelling' character of his office. God, however, is not bound by any such necessities. His commands and designs are not derived from anything but his own sovereign will. By the same token, man is not really man so long as he is ordered by such necessities. In other words, he is not really man so long as he lives under political constraint.[1]

But if man is not fully man until he mirrors the freedom of God in his own voluntary obedience, he is not man at all when he rejects the rulers. Such an act plunges him into animal-like anarchy. Government is instituted by God "afin que les hommes ne soyent comme chiens et chats."[2]

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[1] Polity--or the organization of social authority--is not *eo ipso* coercive for Calvin. As we shall see in our discussion of the church, he speaks of an "administratio spiritus" under which various church officers are ordained. But they are distinguished from earthly authorities at two crucial points: *they have no power to coerce, and they are elected or chosen (in part) by the members.* They do not rule by necessity, but by the freedom of the spirit (see below). The earthly rulers are emphatically not chosen by the people (CR 55, 559; see Bohatec, *Staat und Kirche*, 67). The transition "is most easy from democracy to sedition." (IV, 20, 8) It is just the point that in their disobedience, men *cannot make the right choice with respect to order*. It is for this reason, as shown, that they must be coerced.

For Calvin, secular government could never participate in the "administratio spiritus," that is, in the redeemed order of God. It always remains the same, retaining its coercive and restraining character. The locus of the redeemed order is only in the church, which is the basis, as we shall see more fully, for the final subordination of the state to the embodiment of true order, the church. This exclusion of the state from the redemptive activity of God is a point of the deepest significance in the Calvinist system.

[2] CR 55, 559.

Man would then no longer be (precisely what he is, according to Calvin) the one who is ordered, internally and environmentally, by God.

Accordingly, the function and character of the governing authorities are spelled out in relation to the creation and enforcement of positive law. The purpose, norms and limits of positive law are laid down in the natural law:

> For it is an axiom of positive law that the law is valid in so far as it is determined and carried out by the ruler; however, it is an axiom of natural law that the validity of positive law is not guaranteed through the naked authority of the ruler, rather its form and contents are just in so far as they correspond to the godly law and to the natural law.[1]

Ultimately, God's order as expressed in natural law and as expressed in positive law and political authority do not contradict each other. Each comes from the same source. But there is no possibility of deriving positive law from natural law in any direct way. Were it derived immediately from natural law, the accuracy or inaccuracy of the derivation would be the final court of appeal regarding the validity of a particular positive-legal decision. This would call in question the final earthly authority of the rulers, for if positive laws could be generally debated or appealed, then the ruler would no longer possess the last temporal word respecting order. He would be 'under' rather than 'over' the law.

Following Cicero's maxim: "the law is a dumb ruler, while a ruler is a living law," Calvin definitely states in certain places that the sovereign is released from the law. He is the law, the lex animata.[2]

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1. Bohatec, das Recht, 126. Translation is mine.
2. Calvin says: "...Les rois eussent les livres de la Loi. Ce n'est point sans cause, qu'on les (magistrats) a nommez en proverbe commun: Les ames

The absolutistic implications of this side of Calvin's positive-legal formulation, which clearly bears a strong relation to Roman legal theory, are strikingly expressed in his theory of rebellion. Calvin holds resolutely that even the tyrannical ruler ought to be obeyed.[1] His commands (laws) bind the subjects *not* because they are necessarily just (and therefore are in accord with natural law or a higher 'court of appeal,' such as the wishes of the people), but because they are commanded by him who is the *lex animata*, the one who *even in his tyranny has his government from God*.[2] Even a corrupt administration is better than anarchy.[3] The intensity of Calvin's passion for order at any price is very strong.

There is, however, another side to Calvin's position on the matter of *princep legibus solutus* which, although it is sometimes thought to be inconsistent or contradictory, is quite consistent when viewed in the framework of his logic of order. Calvin occasionally makes the point

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de la loy. Car que serace de tous les édicts et statuts du monde? Ce sont choses mortes. Cela sera couché en papier: mais ce ne sera rien, sinon qu'il y ait gens eleus pour leur donner vigeur, et faire qu'on y obeisse. (CR 26, 96; 27, 410; cf. CR 5, 23, 67.) Beyerhaus (*op.cit.*, 76-78) shows the influence of Roman notions on Calvin's political and legal thought. In the same vein, Bohatec demonstrates the influence of the humanists on Calvin: "Der Vergleich der Lehre des Zasius mit derjenigen Calvins ergibt eine so auffallende Übereinstimmung, dass man füglich von einer direkten Abhängigkeit Calvins von dem deutschen Humanisten sprechen darf." (*Staat und Kirche*, 50.) Cf., for example, Zasius' statement: "Omnia legibus subiici...excepto principe Romano. Ipse enim animata lex est...Contra ea, quae iuris civilis sunt, iussa principis operantur, si sint clausulae derogatoriae." (From *Intellectus iuris civilis*, 1539, quoted in Bohatec, 49.)

1. Comm. on *Romans 13: 1ff*; Comm. on I Peter.
2. IV, 20, 25.
3. Bohatec says (*Ibid.*, 60): "die verunstatete und verderbte Regierungsform ist besser und nützlicher als die Anarchie." Cf. Beyerhaus, *ibid.*, 99-100.

that 'godlessness' equals 'lawlessness.'[1] In his later writings, especially in the Sermons on Samuel, the idea is emphasized that wilful and immoral acts on the part of rulers flow from an overemphasis upon their freedom from the law.[2] They are under God, and responsible to him; they must not use their power arbitrarily, but in God's service.[3] God always reserves the right to make the ultimate Command:

> If they (the godless rulers) command anything against Him (God), it ought not to have the least attention; nor, in this case, ought we to pay any regard to all that dignity attached to magistrates; to which no injury is done when it is subjected to the unrivalled and supreme power of God.[4]

This exception in Calvin's view of rebellion[5] is, of course, a logological necessity. Calvin remarks frequently that when the ruler attempts to set himself above God, the situation has no longer anything to do with positive law, but falls under the overreigning law of God.[6]

It is precisely the point that if a ruler commands anything against

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1. Comm. on Ps 10:4: "The ungodly...permit themselves to do anything... because their own lust is their law; yea, rather, as if superior to all laws, they fancy that it is lawful for them to do whatever they please."
2. CR 43, 253.
3. CR 29, 555. See Bohatec, ibid., 63; M.-E. Chenevière, La Pensée Politique de Calvin (Geneva, 1937), 171; Cf. CR 5, 18, 14. In this connection, Beyerhaus makes an interesting point: he argues that Calvin's unswerving emphasis upon the sovereignty of God has a 'thoroughly levelling' effect when translated into political terms. Consequently, Calvin is suspicious of monarchy and favors aristocratic government because it does not lend itself so readily to usurpation of the power of God. (IV, 20, 8)
4. IV, 20, 32.
5. It is true that there is still a degree of ambiguity lurking behind Calvin's famous 'exception' to total submission to tyranny. In his advice to the French evangelical church, Calvin urged continuance of worship but political submission to the French king, even though there was clear evidence that he was, from a Christian point of view, ordering 'disobedience' to God. The ambiguity between martyrdom and active revolt was never completely resolved in Calvin's mind. Nonetheless, when proceeding logically regarding his political theory, this exception is inevitable.
6. CR 24, 603; 51, 228, 685, 785. Bohatec, ibid., 80, calls this God's "Überordnung."

God, it is by definition *no* command, and, therefore, "ought not to have the least attention." Likewise, the ruler who makes such a command is *no* ruler because, as we have seen, all rulers derive their power from God himself. Such a 'ruler' may rightfully be overthrown by lesser magistrates, who, as political authorities, still legitimately represent God's order. He may *not* be overthrown by the people, for they have already forfeited their ability to decide aright with respect to order.[1] The ruler remains above the positive law only to the extent that he conducts himself according to the "all-encompassing sovereignty of God,"[2] and according to "the obligations that are imposed on him by God."[3]

There exists, then, a demand for inward obedience, on the part of the ruler, to the true order of God. He is called to compel and to regulate his citizens according to the purposes, norms and limits of the natural-moral law,[4] so that they may be properly prodded in the direction of obedience to God himself. Consequently, the same double function at work in Calvin's idea of natural and positive law, is equally clear in his attitude toward political rulers, with a new variation. Political authority is, by definition, a manifestation of order--it drives towards harmony and regulation. On the other hand, its very reliance upon coercion points to the disobedience and disorder of man, or to the inadequacy of his relation to God. Furthermore, since the rulers are themselves human beings (with the exclusively human characteristic of ethical choice) and not 'forces' such as natural and positive law, they are *themselves* responsible to God. The legitimacy of their kingdom is ultimately judged according to their own *obedience* to the true order of God.

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[1] Chenevière, *op.cit.*, 165.
[2] Bohatec, *ibid.*, 80.
[3] Chenevière, *ibid.*, 172.
[4] Bohatec remarks (*das Recht*, 85): "Der Staat ist nicht bloss eine rechtlich vergesellschaftete Verbindung von Menschen...sondern ein geistigsittlicher Organismus. Diese Auffassung ist die notwendige Folge seiner Lehre vom Naturrecht sofern sich dieses in der positiven Gesetzgebung verwicklicht. Ist das mit dem Naturgesetz übereinstimmende, auf dem Billigkeits- und Liebesprinzip ruhende Sittengesetz der Kern aller positiven Gesetze, an den die Obrigkeit und die untertanen gebunden sind, so ist es folgerichtig, wenn die Obrigkeit ihren Beruf als einen sittlichen auffasst, nicht tyrannisch, sondern väterlich und gerecht regiert, und die Untertanen nicht sklavisch, sondern willig und aufrichtig gehorchen."

We have surveyed, roughly, Calvin's understanding of the *second use of the law*[1] which "constrains" sinners, even though "their *hearts* are not disposed to fear and obey God." The incompleteness implicit in the first and second uses of the law establishes the necessity for the *third use*, which falls under the heading of the redeeming activity of Christ.

Jesus Christ and God's Sovereign Command (The Third Use of the Law)

> The third use of the law, which is the principal one, and which is more nearly connected with the proper end of it, relates to the faithful, in whose hearts the Spirit of God already lives and reigns. For although the law is inscribed and engraven on their hearts by the finger of God,--that is, although they are so excited and animated by the direction of the Spirit, that they desire to obey God--yet, they derive a two-fold advantage from the law. For they find it an excellent instrument to give them, from day to day, a better and more certain understanding of the Divine will to which they aspire, and to confirm them in the knowledge of it.[2]

For Calvin the creation of order and the redemption of order inheres in the "living Word of God," namely, in Jesus Christ.[3] He is the incarnated Command of God as well as the "Head" of the true social structure

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[1] II, 7, 10.
[2] II, 7, 12.
[3] Comm. on Col 1:15, John 1:13; See footnote 4, page 56.

(see II). The purpose of redemption is the same as that of creation: the bringing into proper order of all things. It is Christ who confronts and overcomes the source of social confusion and disorder, namely the heart (or will) of man. It is only by gaining obedience from the heart, in a completely voluntary sense, that man is restored to the image of God. Only then does man take his proper place in relation to God and the rest of creation.[1]

Christ is the obedient one. He does what man cannot do by himself, he obeys with his whole heart. His life, as a consequence, is a perfect pattern of order: "...in Christ the feelings were adjusted (compositi) and regulated (moderati) in obedience to God and were altogether free from sin."[2] Christ is the manifestation of perfect harmony between the "will of God and the will of man, so that they differed from each other without any conflict or opposition."[3] Thus, Christ is the "living image of God his Father."[4]

Because of Christ's total obedience even to death, "sin has been abolished, salvation has been given back to men, and in short the whole world has been renewed and all things restored to order."[5] In terms of our analysis, obedience to God's Command entails the fulfillment of God's social-structural design. Christ is a logological necessity, for if God is to be God (the authority of order), and 'order' means the harmonious arrangement of all things, then his order must be completely obeyed.

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[1] Comm. on Lk 17:20.
[2] Comm. on John 11:33.
[3] Comm. on Mt 26:39.
[4] CR 33, 59.
[5] Comm. on John 13:31.

God would cease to be 'God' not only if his provisional agents of coercion did not prevail against the No of man, but also if he were not somehow able to overcome even the heart of man, and thereby inaugurate the Kingdom. In short, if 'God' equals perfect order, his order (Command) must order perfectly (structure all things perfectly harmoniously and coherently).

Therefore, those who participate in the new order in Christ's Body, those "who voluntarily devote and submit themselves to be governed by him,"[1] owe their decision to the Decision of God in Christ on their behalf. They respond to God's Command from the heart because in "le grand secret conseil de Dieu," they were so *elected*.[2] Calvin's doctrine of predestination[3] betokens the freedom of the sovereign will of God over the creation of order. Man is not the final authority; God is. That some men truly obey and some do not can be ascribed to no other cause than the 'free grace' of God which is 'confirmed' and 'sealed' in Christ. It is just the point of the doctrine that 'in Christ' men eagerly acknowledge (or confirm) that it is *God* who is sovereign.

The Command of God (the law) is fulfilled in Christ by his voluntary, loving obedience, and, therefore, it can become fulfilled by the members of the Body. Christ himself is not only the correct interpreter of the law, by means of his life, death and teachings, but he *is* the law, insofar as he embodies the end toward which the law points--the free and reverent submission to the sovereignty of God. By constraining themselves increasingly under the 'yoke of Christ,' by accepting Christ's 'pattern' of obedience, Christians come to grasp the real purpose and function of the law. They come "day by day" to "have a better understanding of the Divine Will," and they progressively attain "the perfection of righteousness."[1] In other words, they come to affirm the law *not* as an unavoidable necessity that coerces and restrains them, but as the Command of *God* that sets them free for loving, voluntary response.

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[1] Comm. on Mt 6:10.

[2] CR 8, 114; 22, 47.

[3] See III, 21-25 for Calvin's discussion of predestination.
It may be pointed out, in passing, that the relation between God's electing will and man's elected (or predestined) will differentiates Calvin's doctrine of predestination from "fatalism," insofar as that term means passive acceptance of what is. He who is elected now wills *actively* with respect to God's order--he 'mirrors' God's active, free will. Thus, the creation of a 'new order' is implicit in the emphasis upon 'will,' with its intrinsic volitional and futuristic dimensions (see III at 107, below). A man manifests his election *by electing in new ways*, in ways that as an 'old man' under the bondage of sin, he was hindered from choosing.

In this framework, Calvin's theory of conscience in relation to Christian liberty is extremely important.[2] The conscience is the 'medium' between God and man in which is gathered up all the complexities and dynamics of Calvin's logic of order. It is both the locus of man's deepest relationship to God, and the center of unrelenting torment to him. To begin with, the conscience reveals the basis of man's disobedience; "it brings him to conviction" because he turns the order of God (in both its dimensions) into disorder.[3] He does not revere God as the ultimate authority, rather he reveres the Command of God, the Law, above God himself. That which was given in order to lead man to the heartfelt dependence on God in which true liberty consists, is transformed into a 'yoke' and man is bound to his own disobedience. When the conscience shackles the freedom of God to his created order, its own

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1. II, 8, 51.
2. See III, 19, "On Christian Liberty."
3. III, 19, 15.

distinctive freedom becomes shackled also. The fatal flaw is that God's order is regarded as over, closed or 'old,' something that can be identified with God himself and relied upon as one would rely upon God. So regarded, the law becomes coercive and binding. It drives man against his will (in the various forms of natural and positive law and political authority) in the direction of the sovereign God. At the same time, it convicts man just because he must be driven towards God, because he does not freely heed the Word in "voluntary obedience,"[1] with "alacrity and promptitude."[2] The Command which was meant to set the conscience free, now binds it in such a way that its passion for harmony with God cannot possibly be satisfied, but can only be at once intensified and frustrated through its bondage to the old order. So the conscience is dynamic, craving 'confidence,' 'tranquility' and 'appeasement' from the 'terror' and 'disquietude' produced by the haunting conviction of the law. It drives and disturbs man, and will not let him rest in less than God himself.[3]

From a logological point of view, we are again before the separation of the command and the structural dimensions of order. The law (command) does not automatically create social coherence (it is not identical with it). To hold that real and true harmony will exist if only man fulfills the law is, according to Calvin, the very seat of perversity. By the same token, the way things are structured does not itself issue in a reliable ethical or legal command. The world is, after all, fallen. As we have seen, command and structure find their unity only in a dynamic, indeterminable fashion, that is to say, in the sovereignty of God. It is Christ who is the consummation of God's sovereign combination of command and structure. It is he, for reasons mentioned above, who removes the conscience from coercion and necessity and bequeathes to it a liberty fully in the image of God's liberty. 'In Christ' man may now participate in that dynamic, indeterminable interweaving of command and structure that is in God. Such participation defines his obedience insofar as man recognizes "with alacrity and promptitude" that God's Command is fulfilled only in a new, harmonious structure of relationships, and, at the same time, that this structure is fulfilled only when it includes the free response of a totally voluntary will.[1]

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[1] Loc.cit.

[2] Loc.cit. See also III, 19, 5.

[3] Here, in sum, is the 'double function' of the command we have noted throughout this section.

It is, therefore, clear why Calvin writes:

> Now, since the consciences of believers, being privileged with the liberty which we have described, have been delivered by the favor of Christ from all necessary obligation to the observance of those things in which the Lord has been pleased they should be left free, we con-

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[1] "Nothing can be plainer than this rule, that our liberty should be used, if it conduces to our neighbor's edification; but that if it be not beneficial to our neighbor, it should be abridged." (III, 19, 12; cf. 11) In relation to God's free grace, man is at liberty to exercise and to regulate his conduct according to the 'duties of charity.' Of course, Calvin is careful to point out that even the 'duties of charity' are not the ultimate 'law' of behavior, for they are also "subservient to the purity of faith." (13) The conscience "regards God"; "it has to do with God alone." (16) Only when God as free sovereign is taken fully into account is there a "lively inclination to the service of God, and a sincere pursuit of piety and holiness of life." (16) It will then be inevitable that "the fruits of a good conscience reach even to men."

It must also be reemphasized that law is not completely eliminated, but its status is radically revised: the law "still continues to instruct and exhort, and stimulate to duty, although *it has no place in* their consciences before the tribunal of God." (III, 19, 2, Italics supplied.)

We shall deal with the new structure of social relationships in II.

clude that they are exempt from all human authority.[1] The conscience, now, stands directly before God, and, in obedience to him, nothing else can be relied upon. In Christ there is a new breakthrough of God's authority that demands a total reorientation of allegiance. However, in keeping with Calvin's understanding of political authority, liberty of conscience is 'spiritual' and may not be "misapplied to political regulations."

> ...man is under two kinds of government--one spiritual by which the conscience is formed to piety and the service of God; the other political, by which a man is instructed in the duties of humanity and civility...the former species of government pertains to the life of the soul, and...the latter relates to the concerns of the present state...But these two, as we have distinguished them, always require to be considered separately.[2]

As long as man exists in his 'present state,' as one for whom the complete Kingdom of God has not yet come, God's political order of coercion must still prevail. The old order does not lose its provisional control, at least over the external conduct of man. But it is obvious from our study of Calvin that the realm of the free conscience--as a key to the whole question of order--is ultimate, and provides the guidelines for understanding God's Plan and his work in the world. In terms of Calvin's logic of order, nothing is surer than that the Kingdom of God, towards which all things move, includes overcoming the engines of coercion in favor of voluntary obedience to the will of God. Of course, the Christian lives in constant tension between the two orders, but the tension will finally be set aside. There is absolutely no basis in Calvin's system for conceiving of the two orders as eternally coexistent, as part of

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1. III, 19, 14.
2. III, 19, 15.

some 'natural' hierarchy of order.[1] The pronounced developmental or progressive character of the Kingdom of God signals the entire movement of history as a movement from political-legal regulation and coercion *to* the self-determining, self-integrating freedom of the conscience.[2]

On the logic of the system, it is, therefore, quite impossible to do what Calvin admonishes, to abstract the mind "from all consideration" of one realm while the other is being discussed.[3] Neither Calvin nor his followers was ever able, practically or theoretically, to make such a complete disjunction. As Calvin himself says, "Jésus-Christ est ainsi le commencement de la second et nouvelle création; car la premiere création etait déchue en la ruine du premier homme."[4] In the "new creation," *all* forms of order point toward and will eventually be transformed in Christ; if they do not accept that fact, they may no longer be considered forms of order:

> Si ce n'est du commandement, cette menace nous doit bien faire trembler, que tout royaume qui ne servira à celui de Jésus-Christ sera ruiné. Car cela se rapporte proprement à l'état de l'Eglise chrétienne.[5]

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1. This is one of the crucial distinctions between Calvinism and Thomism.
2. K. Fröhlich in *Gottesreich: Welt und Kirche bei Calvin* (München, 1930) rightly remarks that the entire basis for the Christian's life in Calvin is "das Wissen um das Fortschreiten des Regnum Christi." (42)
3. III, 19, 15.
4. Comm. on Col 1:18.
5. Bonnet, J., *Lettres françaises de Jean Calvin*, (Paris, 1854), II, 401. Cf. also the famous Dedication of the *Institutes*: "But it shall be yours, Sire, not to turn away your ears or thoughts from so just a defence, especially in a cause of such importance as the maintenance of God's glory unimpaired in the world, the preservation of the honour of divine truth, and the continuance of the kingdom of Christ uninjured among us. This is a cause worthy of your attention, worthy of your cognizance, worthy of your throne. *This consideration constitutes true royalty, to acknowledge yourself in the government of your kingdom to be the minister of God. For where the glory of God is not made the end of government, it is not a legitimate sovereignty, but a usurpation. And he is deceived who expects lasting prosperity in that king-*

While the state as the locus of coercive power is certainly distinguished from the church in Calvin's logic, it has no other function than to 'serve' the church. *In the nature of the state's differentiation from the church lies the basis for its subordination to the church*. Coercion must give way to freedom; the old order must give way to the new. Accordingly, Choisy's dictum is confirmed: "La religion (Christian) est envisagée comme le fondement sur lequel repose directment necessairement l'order social." And it is underlined by Calvin's stipulation regarding the 'religious offices' of the state: "But this civil government is designed, as long as we live in this world, to cherish and support the external worship of God, to preserve the pure doctrine of religion..."[1] The framework for proper order is provided by the consistent maintenance of the Reformed Christian faith.[2] There is no true order without the honor of God.[3]

However, if the differentiation of church and state means subordination, it also *does* mean differentiation.[4] The common assumption that Calvin sought simply to reinstate a theocracy after the fashion of the Old Testament is completely mistaken. He always resisted suggestions,

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dom which is not ruled by the sceptre of God, that is, his holy word; for that heavenly oracle cannot fail, which declares that 'where there is no vision, the people perish.'" (Italics supplied.) Cf. further, Beyerhaus, *op.cit.*, 94.

[1] IV, 20, 2, 9.

[2] Chenevière: "Calvin estime que le magistrat doit faire en sorte que non seulement les commandements de portée purement sociale de l'Evangile, mais aussi les commandements de portée purement religieuse soinent observés dans la cité." (*Op.cit.*, 235.)

[3] CR 53, 140: "Voila pourquoi (Dieu) a etabli les rois et magistrats et la police humaine. C'est en premier lieu: que nous vivions, dit Saint Paul, en toute pieté." (CF. also, CR 52, 267; 52, 130, 134, 137, 139.)

[4] For a discussion of the differentiation of church and state, see François Wendel, *Calvin: Sources et Évolution de sa Pensée Religieuse* (Strassbourg, 1950), 74, and André Bieler, *op.cit.*, 129-130.

by such people as Karlstadt, that the Mosaic law ought to be legislated into practice.[1] He rejected the notion that Genevans should establish a new Davidic Kingdom. The relevance of these forms was, for him, clearly over.[2] In matters of Genevan positive law and form of government, Calvin generally accepted the historical givens.[3] The reason should be obvious: Christian liberty cannot be legislated, it cannot be coerced. Its vital ingredient is the voluntary will, something that does not characterize the realm of government. Political authority *as it exists* is given by God. It can not be created or remade by men, certainly not by Christian men. Their only activity is to embody the true order in Christ that overcomes the necessity for earthly governments. The tensions and confusions between differentiation and subordination, which most assuredly do appear,[1] ought not to blind us to the clear direction of Calvin's logic of order. It is only when the logic is borne in mind that the complexities in Calvin's political and social theory are fully understandable.

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[1] Ernst Pfisterer, *Calvins Wirken in Genf* (Essen, 1957). Pfisterer confirms what we have already seen: that the Mosaic law and especially the Decalogue is for Calvin the basis for the 'fundamental moral framework' of the positive law, but not of its contents (52-56). There is a great deal of room for discretion on the part of the authorities in the light of their own legal traditions and historical circumstances.

[2] A most important statement by Calvin, in this connection, demands comment: "Hodie non habemus terrenum regem, qui sit Christi imago: sed Christus per se ecclesiam vivificat. Tunc autem illud fuit umbratile, quod rex erat quasi anima communis vitae." (CR 66, 635; quoted by Beyerhaus, *op.cit.*, 143) Whereas kings, in times now over, were virtually the spirit of social life, now Christ is that spirit, and he reigns *per se* in the church, 'vivifying' its life. *'Today' we by no means have earthly kingdoms that are in the image of Christ.* Since the coming of Christ, and the differentiation of the church from the state, the rulers have decidedly taken a subordinate place. The locus *per se* of Christ's Lordship is the church.

Beyerhaus cites convincing evidence to refute Choisy, the classical representative of the idea that Calvin wished to found a new Israelitic Kingdom. See esp. 142-45. For Calvin Christ had come, and the Old Testament form of social life had ended. In face of so many misunderstandings along these lines, these aspects must be reemphasized.

[3] Chenevière, *op.cit.*, 197-221, has an instructive discussion of Calvin's legal and political role in Geneva. There is reason to believe that he was true to his idea that secular political order is to be accepted *as is* from God, though he also, of course, introduced some political innovations, particularly with respect to the relations of church and state. Discussions about Calvin's acceptance of 'historical givens' must always contain certain important qualifications. See ftnt. 1, 76, below.

II.

Sovereignty and Society

Society and God's Sovereign Order

Just as God's Word commanded or 'ordered' the Creation into existence, and just as his Word commands man to participate in fully integrated obedience, so, also, God's Word 'orders' or structures all things perfectly. The world before the Fall was one grand harmony. All of nature and all men performed their functions cooperatively in an organic testimony to God. In other words, Creation in the Edenic period did what was ordered.[1]

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[1] It must be emphasized that one of the profoundest and most far-reaching unclarities in Calvin's theological-social thinking is his frequent insistence on the virtual isolation of the political from the churchly realm. As we pointed out below, he would abstract the mind "from all consideration" of the one realm while the other is discussed. This partition between the realms enabled him, on the one hand, to speak in rather static terms about accepting whatever political powers there were, as being instituted of God (see particularly 63, above). He wished to emphasize that given political authority _as such_ had a legitimation all its own, and that the Christian vocation was not the construction of a 'new politics.'

On the other hand, Calvin held a conception of an all-transforming 'new order,' an 'ecclesia reformata semper reformanda.' Its effects upon the political order, both theoretically and practically, cannot be ignored. The 'new order' in Calvin's thought meant an uncoercive order, and, therefore, it was to be contrasted, essentially, with the existing political order. However, neither Calvin nor, for that matter, the Elizabethan Puritans took into account the inevitable innovative implications of the 'new order' for politics. They could not effectively cope with (nor apparently understand) the unavoidable interrelations of 'church' and 'world' because they made such sharp theological as well as practical divisions between them.

Just as man alone is the one who possesses the choice between obedience and disobedience, so he is responsible for the maintenance or destruction of the full integration of creation. Just as man's role in relation to God's Command is unique because he faces a decisive alternative, so man's role in relation to the socio-natural order is unique because he is potentially the principal benefactor as well as despoiler of order. It is (logologically) for this reason that man stands at the top of creation: "But as we know...the world was made chiefly, for the sake of mankind."[2] It is in this sense that creation "is subjected" to man. Its coherence depends (to a certain extent) upon man's obedience.[3]

God's socio-natural design dictates optimum economic abundance and the highest degree of its just distribution. Perfect enjoyment of the "good things" of Creation is the object of God's order.

> Le Prophète donne à entendre que Dieu non seulement pourvoit à la nécessité des hommes, et qu'il leur donne autant qu'il et suffisant pour l'usage ordinaire de cette vie, mais que, par sa clémance, il les traite encore plus libéralement quand il réjouit leurs coeurs de vin et d'huile.[4]

But this enjoyment must be seen in the context of harmonious social relationships. In the discussion of Mt. 25:20, Calvin asserts that the economic processes of labor, trading and gain, in connection with the gifts God has committed to men, ought to be performed for "the profit or advancement of the whole company of believers in common." The "use or

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[1] Comm. on Ps. 104:4, 19:1.

[2] I, 161, 6.

[3] See page 53, footnote 4.

[4] Comm. on Ps. 104:15.

"object" of the gifts of God, Calvin goes on, "is to promote mutual intercourse among men." "Now the *gain* which Christ mentions is general usefulness, which illustrates the glory of God."

The interweaving of economic abundance and social integration is crucial for our study. According to Calvin, "l'homme etait riche avant que de naître,"[1] but abundance is unthinkable apart from "*general* usefulness" or "*mutual* intercourse." And, of course, social integration is unthinkable apart from "the glory of God." In other words, the very object of mankind is to enjoy the fruits of God's Creation, but this can be done only within a framework of order, a fact that implies two things: 1) Unless man accepts the fruits of Creation as the fruits of *God's* creation, he will not enjoy them; he will pervert them. Man must concede from his heart that God is the giver, the sustainer. "And, therefore, whoever shall determine to give God his share will leave nothing for himself."[2] The material enrichment of man is subsumed under God's Command, under his system of order. 2) Only as there is true obedience to God's Order will there be true economic order at the social level, and true economic order alone can produce a satisfactory appropriation and distribution of abundance.[3]

Calvin, thus, has what we might call a "functional" view of the economic life in distinction from a "preferential" view, which organized

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1. Comm. Moise, Gen. 1:26.
2. Comm. on Mt. 25:15.
3. Biéler, *op.cit.*,: "Le lien d'amour que Dieu a primitivement établi entre tous les membres de l'humanité doit provoquer une circulation ininterrompue des richesses allant de une vers les autres. Les biens de ce monde sont destinés à être utilisés pour l'entretien de la vie de toute l'humanité. Si les créatures de Dieu suivaient donc, de leur plein gré, les lois de leur créateur, il y aurait une répartition spontanée et naturelle de ces biens entre tous les hommes." 321.

the economy in favor of special groups. The economic order is to be evaluated in terms of "general usefulness"--that is, in terms of maximum production and just and equal distribution among the community of mankind. Quite logically, the kind of social organization which makes possible a functional economy is a functional definition of social roles. Calvin's social theory is quite consistent at this point:

> It is because God, as he has assigned to everyone his place, and has bestowed on him natural gifts, gives him also this or the other injunction, employs him in the management of affairs, raises him to various offices, furnishes him with abundant means of eminent usefulness, and presents to him the opportunity.
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> It is absurd, however, in the Papists to infer from this, that the gifts of God are conferred on every man according to the measure which he deserves...Now we know that no man is found by God to be suitable till He has made him so.[1]

A man's position in the Edenic society is to be understood in relation to his usefulness in God's Order, and that means the functional integration of his particular God-determined role (or calling) with the roles of the other members of society.[2] A man's "eminent usefulness" is defined according to his voluntary acceptance of and participation in a system which serves God and therefore man. No preferential roles are permitted in God's system of organization.

> Que celui qui a quelque superiorité sur les autres, se doit abstenir de toute tyrannie, que nous devons estre humains envers ceux que Dieu nous a assujettis pour ne dominer point sur eux en cruauté, et an tirer tout ce que nous pourrions; mais que nous avisons de les traiter humainment comme nos freres.[3]

Social differentiation there most assuredly is, but in Calvin's view of the perfectly ordered community, there are no "better" or "worse" callings. The social distinctions between sexes, between parents and children and within the economic order are, according to Calvin, created by God as part of his plan of organization for the effective accomplishment of his purpose.[1] This is the ordo naturae of which we spoke in I.

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[1] Comm. on Mt. 25:15.

[2] There is a distinct variety of utilitarianism in Calvin's understanding of Society. Cf. Bohatec, Staat und Kirche, 709.

[3] CR 27, 350.

In support of a fundamentally functional concept of the social order, Calvin argues that social equality was characteristic of the primitive community. "Dieu pourvoit à tous indifféremment de ce que la terre produira."[2] All men received the gifts of God "unpreferentially (indifféremment) and in harmony. Each member of the primitive society was, thus, "mise en son lieu, comme en un bâtiment bien composé."[3]

Disobedience and the Disordered Society

As the fall was the result of man's disobedient response to God's command, so it signified the breakdown of the harmonious, well-ordered primitive community. As we have mentioned in I, "La terre a été maudite à cause d'Adam."[4] It was precisely man's breaking of God's Command which spelled the breaking of God's pattern of social structure. Since there is just social relationship only when the design of God is maintained, the breaking of that design leads to social dysfunction. Preferential relationships now characterize the "perverse society." Men no longer deal with each other as brothers under the Lordship of God, and therefore they do not contribute to society (for the sake of "general usefulness") their particular abilities and offices. On the contrary, "en leur orgueil et fierté ils mepriseront tous leurs prochains, mais aussi feront la guerre au ciel."[1]

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[1] CR 51, 785.
[2] Comm. Moise, Exodus, 23:10-11.
[3] Comm. on I Peter, 2:13.
[4] Comm. Moise, Gen 3:17.

The prerogative of ordering or arranging men in social hierarchies according to the highest degree of functional effectiveness is usurped from God by man in the Fall. Man attempts to dominate the socio-natural order *in his own name and by his own right*, rather than in the name and by the right of God. Consequently, as his relation with God is inundated with "orgueil et fierté," issuing in "la guerre au ciel," so man's relation with his brother is controlled by concern for honor and dignity. The attempt to attain prestige by himself and for himself results in social division and strife. In his disobedience man tries to replace God as the source of ultimate order, and this, of course, provokes the "fearful deformity" of all things. Calvin indicates that *man's* system of order is directly contrary to *God's*:

> Notons bien donc que chaque fois que ceux qui étaient élevés en haute dignité sont abattus, et à l'opposite que ceux qui étaient méprisés sont honorés, que cela n'advient point sans cause.[2]

This is the "total perversity" of which we spoke in I. It infects sexual relationships[3] as well as familial.[4]

Total social perversity also affects the economic order. Both optimum production and just distribution were impeded through the Fall. God is no longer taken as the One who provides the gifts of creation and properly organizes men that they may benefit from the gifts to the utmost. Man now seizes them for himself. What was God's design becomes man's design. As a result, men "sont brulants en telle convoitise, que toujours ils attirent à eux,...et jamais ne se contentent."[1]

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[1] CR 46, 136.
[2] CR 46, 136.
[3] Comm. on Ro. I.
[4] CR 28, 454.

Envy, vanity, pride, avarice, all of which lie at the heart of the fallen economic system of man, beget social alienation. The abundance that economic activity yields becomes the god, and the attainment of abundance--in itself--the driving command of human life. The system of order is formulated in terms of "Mammon." Like the political order, which set itself up in the place of God, such a system is no order at all; it is "bouleverses" (Biéler).

However, just as in the politico-legal order man's no to God's Command was not allowed to produce complete disorder (which would mean God was no longer "God"), so in the socio-economic realm man's divisive disobedience does not triumph totally over God's order. According to Calvin, material goods continue to have a "pedagogical use" even after the Fall.[2] The nourishment and satisfaction which these material goods continue to bring men, if only in a fragmentary way, serve as an adumbration of the coming Kingdom of God.[3] The gifts of Creation continue to serve the purpose of God even in spite of man's rejection of him. God continues to be Lord over Creation and its fruits even though man does not acknowledge it. He continues to give gifts and to organize men in such a way that these gifts can be produced and to a limited extent enjoyed. It is another aspect of God's Providential Order which prevails and directs things according to his design, even if that design has for the time being become a coercive order.[1]

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[1] CR 28, 200.
[2] CR 25, 623.
[3] Comm. on Ps 128:2.

God's New Order: the Church and the Kingdom

As we saw in I, if God is to remain God it is a logological necessity[2] that both dimensions of order be fulfilled completely. As Jesus Christ was the fulfillment of the Command of God in Creation and Redemption, so he is the expression and fulfillment of God's social-structural design.

Man's wholehearted decision against God plunges him into the consequences of disobedience and disorder. Man is trapped in a situation that (from the point of view of his own capabilities) affords "no exit." His dilemma is compounded exactly by his attempts to make himself obedient and to order his own existence. Since God alone is the Author of Order, it is he alone who can provide perfect order. Only when man concedes this from the heart, as we have seen, may he participate in true order. But such a concession is made, not through reliance on man's own will (that would be simply another manifestation of destructive self-reliance), but through God's Gracious Act in Christ. It is in the Body of Christ that all the bitter fruits of disobedience and disorder are done away. There men become perfectly obedient and perfectly ordered. In a striking passage Calvin indicates these two dimensions of Christ's Lordship: his perfect obedience and his accomplishment of order:

> Il s'est humilié pour nous exalter, il s'est asservri
> pour nous affranchir, il s'est appauvri pour nous enrichir,

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[1] In Calvin's practical Genevan social-organizational formulations he sees the regulation of the economic order as part of the political task. The economic order is thus subjected to the politico-legal coercion.

[2] Biéler, op.cit., 246: "La dessein de Dieu reste immuable; son plan de restitution de l'universe est déjà conçu et arrêté au moment où il donne la vie à l'homme."

> il a eté vendu pour nous racheter, captif pour nous deliverer, condamné pour nous absoudre, il a eté fait malediction pour notre benediction, oblation de peché pour notre justice, il a eté defiguré pour nous figurer, il est mort pour notre vie. Tellement que par lui rudesse est adoucie, courroux apaisé, tenebres eclaircies, injustice justifiée, faiblesse vertueuse, deconfort consolé, peché empeché, mepris meprisé, crainte assurée, dette quittée, labeur allegé, tristesse rejouie, malheur bienheuré, difficulté facile, desordre ordonné, division unie, ignominie anoblie, rebellion assujettie, manace manacée, embuches debucées, assauts assaillis, effort efforcé, combat combattu, guerre guerroyée, vengeance vengée, tourment tourmenté, damnation damnée, abime abimé, enfer enferré, mort morte, mortalité immortelle.[1]

This Kingship extends, according to Calvin, to the whole of creation. There is a decided cosmic restoration.[2] At the same time Christ's Kingship means a "new society" in which the forces of division no longer reign. "For in the cross we recognize that sin was erased, the world was reconciled to God, evil was abolished, and Satan put down."[3] In one place Calvin even goes so far as to say that Christ's Kingdom (the new order) extends to all men. He appears to imply that Christ is fully Lord already, that all is really organized under his Headship.[4]

But this sentiment is unusually unambiguous. Normally, whenever Calvin makes an assertion about the totality of Christ's Lordship, his practice is to qualify it decisively. In commenting on John 17:1-2, for example, he qualifies thus:

> So, then, the Kingdom of Christ extends, no doubt, to all men; but it brings salvation to none but the elect, who with voluntary obedience follow the voice of the Shepherd; for the others are compelled by violence to obey him, till

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1. CR 9, 813-815.
2. CR 49, 721, 722.
3. Comm. on John 17:1.
4. Comm. on John 17:2.

> at length he utterly bruise them with his iron sceptre.[1]

This quotation is particularly significant. It illustrates two central factors in Calvin's thought; 1) Christ's limited Kingship (over those "who with *voluntary obedience* follow the voice of the Shepherd"), and 2) the utilisation of coercive order in the extending and maintaining of Christ's Kingdom ("for the others are *compelled by violence* to obey him").

1) Of course, in describing Calvin's conception of Christ's present Kingship as "limited" or "partial," one must always bear in mind the presence of ambiguity. For example, Calvin can say: "Thus both things hold true--that all things are now subject to Christ, and that this subjection will nevertheless, not be complete until the day of the resurrection," but then he adds significantly: "because that which is now only begun will then be completed."[2] Or, as he says elsewhere: "Thus, during the period of our pilgrimage, while we are absent from God, Christ interposes between us, *to bring us by degrees* to a perfect union with him."[3] Accordingly, Calvin tends to reduce the "eschatological tension" of the New Testament to a developmental concept. Seen in the light of other passages, this can only mean, for all practical purposes, a concept

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[1] John 17:2.

[2] Comm. on Philip. 2:10; cf. Comms on Eph. 1:20-23; Col. 1:14-20.

[3] II, 15, 5. (Italics supplied.) This 'developmental' or 'progressive' idea of the relation between man and God is further underlined in the following: "Those who, compared with others, have made a very considerable progress in the way of the Lord, are yet at an immense distance from this perfection. For though they love God with their soul, and with sincere affection of heart, yet they have still much of their heart and soul occupied by carnal desires, which retard their progress towards God." (III, 19, 4.) This is not to say, of course, that the eschatological dimension is gone from Calvin. The Kingdom is an act of God's will (see section III of this chapter for an examination of the interrelation between 'sovereignty' and 'eschatology') and in no sense the achievement of man's progressive piety. Our main point in this section is that Christ's 'universal Kingship' is compressed within the church so that the church becomes the beginning point for the 'development,' cultivation or extension of the Kingdom.

of the partial restoration (until the Second Coming) of God's true order.

Calvin's response to certain crucial New Testament passages is particularly revealing. On Col. 1:20, the textus classicus of Christ's unconditional reconciling power over "all things," Calvin comments:

> He (Paul) declares, accordingly, that we are blessed through Christ alone, inasmuch as he is the bond of our connection with God, and, on the other hand, that, apart from him, we are most miserable, because we are shut out from God (literally, "banished from the society of God").
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> Should anyone, on the pretext of the universality of the expression ("all things"), move a question in reference to devils, whether Christ be their peace-maker also? I answer No, not even of wicked men: though I confess that there is a difference, inasmuch as the benefit of redemption is offered to the latter, but not to the former. This, however, has nothing to do with Paul's words, which include nothing else than this, that it is through Christ alone, that all creatures, who have any connection at all with God cleave to him.[1]

For our purposes Calvin's remarks concerning Eph 1:21-23 are very important:

> There is no impropriety in limiting the word all to its application to this passage; for, though all things are regulated by the will and the power of Christ, yet the subject of which Paul particularly speaks is the spiritual government of the Church. There is nothing, indeed, to hinder us from viewing it as referring to the universal government of the world; but to limit it to the case in hand is the more probable interpretation.[2]

Thus, Calvin's propensity, again and again, is to confine the present extent of Christ's Kingship to the church. The church is decidedly the "restored society," the locus of the new order, in which men are reconciled or integrated with one another and with God. In the church exists the harmonious "diversity of Grace" in which "whatever benefits God confers on (the members), they should mutually communicate to each other."[3]

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[1] Comm. on Col. 1:20.

[2] Comm. on Eph. 1:23.

[3] IV, 1, 3.

Since Christ becomes the "Head" of all relationships in the church, these relationships are properly ordered. In the spiritual communion in the Body of Christ, there is no preferential difference any longer: "Il n'y a nulle acception de male et de femelle...quant au Royaume de Dieu, qui est spiritual, il n'y a point de distintion ni de difference entre l'homme et la femme."[1] Discrimination between races and nationalities is overcome.[2] Economic class distinctions are also eliminated in the Body of Christ.[3]

It is part of the voluntary obedience of those in Christ to show forth to the world evidence of this reconciliation. The "special brotherly love," which exists in the church, is not only a gift but a duty.[4] It is the Christian's expression of the total obedience to the Command of God. The two dimensions of order are brought into full relationship in the church. By demonstrating brotherly love in radical reconciliation within the Body of Christ, one is being truly obedient (or living up to the laws of God, which, as we saw in I, are revealed in Christ's life, death, teaching and interpretation of Old Testament law). As usual, the two dimensions may be reversed without losing any meaning.

The achievement of the "diversity of Grace," which is the Body of Christ, means, for Calvin, a quite practical sharing of economic goods among the members of the Body.

> Bref, cette communication dont parle ici saint Paul est cette affection fraternelle qui procède du regard que nous avons quand Dieu nous a conjoints ensemble et qu'il nous

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1. CR 49, 719.
2. Comm. on Mt. 8:11.
3. Comm. on James 1:9, 10.
4. As Bohatec says: "Die Nächstenliebe ist eine Pflicht, von der sich niemand befreien kann." (das Recht, 38; cf. CR 2, 511.)

> a liés comme en un corps et qu'il veut qu'un chacun s'emploie pour ses prochains, que nul ne soit adonné à son particulier, mais que nous servions tous en commun.[1]

Monopoly and hoarding are clear examples of the bitter fruits of the "perverse society," for through these means the rich gain discretionary power over the poor, and the poor are defenseless against them. The rich may order the lives of the poor according to their own desires, and thus stand in the place of God.[2] One clear sign of the Christian church is the lack within the fellowship of material inequalities and divisions.[3] Calvin even likens the life of the church to the Hebrews in the desert, who received equally, according to their needs, from the abundant hand of God.[4]

The main point is that in the restored community, the church, the functional view of economic life of which we spoke, is reinstated. For Calvin: "Christ reestablished among Christians, the members of his church, a just redistribution of goods that was destined (ultimately) for all. This transformation prefigured the restoration of the economic order in the whole of society."[5] And the chief ingredient of the new order is, naturally, that each individual voluntarily employ his own gifts on behalf of his neighbors, doing nothing only for himself, but serving the good of the whole community. In Christ the genuine 'ordre naturel harmonieux'[1] is established once again, and every man need no longer be coerced into carrying out his share of the responsibility. Now he willingly and eagerly, or with "alacrity and promptitude," assumes his functional place, or his 'calling.'[2]

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[1] CR 53, 640.

[2] CR 46, 552; Comm. on James 5:4.

[3] Comm. on II Co. 8:14.

[4] Comm. on Exodus 16:13-18.
According to Calvin, private property is not eliminated, but its status is very much revised for the Christian. In the first place, the Christian holds it individually by God's Grace; he is the _gérant_ of God. In the second place, he holds it in relation to his Christian brothers. In terms of our scheme, property stands within the order of God. Each person is a property-holder under the Headship of Christ. Both individualism and communism are therefore excluded. Calvin takes the middle-way between the two extremes. His view is more 'communalistic' than anything else.

[5] Biéler, _op.cit._, 255.

In other words, economic life is *specially related to and bound up with* the eschatological purposes of God. Economic relationships are the distinct medium through which the order of God is expressed. What man was created to be--a freely obedient being who responds gratefully to the gifts of God, ardently sharing them with all his brothers and turning them to corporate use--is put by Calvin again and again in the language of economic action.

Of course, such totally harmonious economic life is part of the *ultimate* purpose of God; it is, as such, 'ideal' and never altogether realized in the 'present state.' But it is expressive of that toward which all things move, of that which characterizes the Kingdom of God. It is, therefore, expressive of what exists proleptically in the Body of Christ and stands in tension with the old order. For the time being, the economic life of the world must continue, like all 'secular' life, to be partly organized by coercion; it must be subjected to political power and authority. But such a situation is only provisional. It is now in process, and it finally must give way to the complete Kingship of Christ, under whom all the members of society shall become fully self-integrating.

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[1] Comm. on I Peter 2:13.

[2] For an examination of the corporate conception of 'calling' in Calvin, see Bohatec, *Staat und Kirche*, 638-648. The organic dimension is not stressed by Weber. If it had been, much later misunderstanding would have been avoided.

The importance of this implicit differentiation between economic action and political-legal action cannot be overestimated.[1] Calvin's

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[1] Unquestionably, one of the historic bases of the rise of modern industrial capitalism was the crucial *differentiation* between political and economic life. As Professor Parsons explains in "Some Reflections on the Institutional Framework of Economic Development," *Structure and Process in Modern Societies* (Glencoe, 1960), "This is because political organization in a preindustrial situation without outside pressures would put usually insurmountable obstacles in the way of such economic development, unless there were features in the social structure which could put institutional restraints on the exercise of political power and which *independently* of the political structure would provide special impetus to economic development." (101) He continues: "...It may still be doubted that there could have been a general breakthrough in economic development without severe restraints on political authority." (107)

We are suggesting that Calvin's definition of economic behavior in relation to the purpose and orientation of the 'new order' *over against* civil political action, with its characteristic coercive power, is of the utmost importance in introducing a theological basis for such differentiation. That is, the whole point of Calvin's theology is to set forth a context of social action which, in reflecting or 'mirroring' the free, autonomous will of God, acts *freely* and *autonomously*, determining and electing *its own independent order* according to its own voluntary decisions and in relation to its own functional needs. Ideally, the 'new order' consists of self-determining individuals who, without compulsion, freely obey the command of God and fulfill his order in harmonious mutuality. This structure of relations is, relative to the state, autonomous since it wills its own order in direct relation to God. Accordingly, it supersedes the old political order as the all-encompassing, omnicompetent source of social authority. The emergence of that kind of society is, as we have seen, the final goal of history. Obviously, therefore, such a conception sets "severe restraints on political authority," to use Parsons' words. From the point of view of the final meaning of social existence, it devaluates in a most radical way the political-legal sphere of influence.

The differentiation between politics and economics can by no means be taken for granted in the history of modern Europe. The development of a value-system in which economic action was correlated with a 'new,' independent order was certainly not inevitable. Ralf Dahrendorf, for example, in his recent *Gesellschaft und Freiheit* (München, 1961), makes the point that a full-blown modern industrial society never developed in Germany, as it did in England, because such a value-system was lacking: "So entwickelte sich in Deutschland, im Gegensatz zu anderen Industrialânder, kein 'okonomischer Individualismus', kein liberaler Kapitalismus...Die industrielle Bourgeoisie, unterwarf sich den burokratische-militärisch Werten ihrer historische Vorgänger" (that is, discussion of economic action is carried on in terms of the functional,

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under Prussian political control). (265) William Ebenstein makes the same point in his *German Record: A Political Portrait* (New York, 1945). We have already referred in the Introduction to the striking contrast between the rise of 'free enterprise' in Late Tudor-Early Stuart England and the rise of extreme mercantilism ('Colbertism') in France. The point is that a vigorous battle had to be fought at the level of religious symbols and values, as well as at other levels. It was by no means self-evident, for example, that the absolutism of Elizabeth, that her passion to subject all of English society (including the economy) to her *political* purposes, was contrary to what most Englishmen held dear during the 16th century. We shall try to show how the logic of order developed by Calvin contributed to the vigorous religious battle that was indeed to take place in England--one that was to shake the foundations of Elizabethan England, and to pose the most ominous threats for political authority.

We may, incidentally, deal briefly with the apparent *qualitative* difference between economic and political action in Calvin's system. Calvin makes quite clear that those who act politically are *set aside* with "special marks" (see above, 59). They have a special calling, obviously not extended to everyone. It is on this basis that they have a particular authority delegated directly from God. There is absolutely no implication in Calvin that political action is the province of everyone, or that just any man is or ought to be 'active in politics.' The Christian is admonished to subject himself to the political authority, but in no sense is he to *become* the political authority. Politics is clearly a special case of action.

Something quite different is true of Calvin's understanding of economic action. *Every* man has (or should have) an economic function, every man is 'called' to industrious, free-willing service in relation to the 'new order.' In fact, that is, as we have seen, how a Christian's call is defined. The Christian is, so to say, called to voluntary, economic responsibility. There is the assumption in Calvin that when everyman heeds God's call and takes his proper place accordingly, distributive justice would be no problem--free economic activity directly under the sovereignty of God 'would take care of itself.' That assumption is quite logical, given Calvin's premise that God's will is the "law of all laws." In willing God's will, order is fulfilled.

There is an interim, of course, and so long as man lives this side of the Kingdom, such a perfect harmony cannot be realized. Certain political control of economic life is necessary (see below), but it is provisional--its ultimate justification has been stripped away. The pressure of history is unavoidably toward a 'free economy.'

It may be questioned whether the logic of Calvin's view is "adequate" to cover the complex problems of institutionalization. That is a problem beyond our present concern (though we take it up in the Conclusion). At the same time, it must be added that Calvin's position, extended, as we shall argue, by the Puritans, was by no means unrelated to the actual "spirit" of industrial capitalism, no matter how inadequate the position might appear today. It might even be claimed that some of the "inadevoluntary, self-regulating life characteristic of the church. Economic and ecclesiological behavior are, as we shall see, parallel forms of action. Calvin's discussion of civil political-legal action, on the other hand, refers to life outside the church, to life in the 'old order.' "...The Church neither possesses, nor ought to desire, the power to constrain--I speak of civil coercion..."[1] It is, as we have seen throughout, the question of coercion that is central. When there is no free response to God, there is no true order. This means that for Calvin the economic sphere--as the expression of the new order--is, so to say, above the law. To be sure, Calvin believed the law and the political ruler must drive man towards spontaneous, cooperative economic action, as his activity in Geneva makes clear. Similarly, the state must drive man in the direction of the true religion. But in neither case can it compel or control the essential voluntary ingredient that characterizes true religion and true economic action. Because the two are fundamentally related, they must finally remain free to stand directly before the sovereign will and Word of God.

In fact, there are the profoundest parallels in Calvin's thought between action and organization expressed in economic terms, and action and organization expressed in ecclesiological terms. Calvin's wider doctrine of the church and Spirit is, therefore, appropriately considered in this context.

> 'The Communion of Saints'...excellently expresses the

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quacies" in the "spirit of capitalism" are at least related to certain "defects" in Calvin's theology and social theory. (More of that in the Conclusion.)

[1] IV, 11, 16.

> character of the Church; as though it had been said that the saints are united in the fellowship of Christ on this condition, that whatever benefits God confers upon them, they should mutually communicate to each other. This destroys not the diversity of grace, for we know that the gifts of the Spirit are variously distributed.[1]

In the 'diversity of grace,' or the spiritual division of labor,[2] there is a greater and richer unity: "*sed in distinctione esse unitatem*."[3] "Quand un homme est excellent en quelque don, c'est n'est point pour soy, ne pour son particulier, mais c'est à fin qu'il en puisse aider en commune à tous les autres."[4] According to Bohatec's suggestive phrase, members of the church are not so much individuals as "individualities;"[5] they are distinguished from one another according to their various specific capabilities in order to serve or to complement one another. It is in his differentiated function rendered for the good of the whole church that the member takes on his individuality.[6] Put theologically, he who is *elected* in Christ,[7] finds his personhood by taking his place in the harmonious structure of the holy community. A Christian is *elected or called to order*. Logologically considered, this is quite in keeping with

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[1] IV, 1, 3.

[2] To use a phrase that underlines the close similarity between ecclesiological and economic language.

[3] CR 49, 497.

[4] CR 41, 373.

[5] *Staat und Kirche*, 282: Cf. CR 34, 663.

[6] The point Emile Durkheim made so classically in *De la division du travail social*--that 'individualism' is a social or institutional phenomenon--could have been found in the theological terminology of Calvin.

[7] Bohatec perceives Calvin's understanding of the interconnectedness of the predestined individual and the church: "Wohl vertritt Calvin einen Individualismus, den Individualismus der Erwählten, im Selbstbewusstsein des Heils festgegrundeten Persönlichkeiten. Aber diese bleiben als solche nur Glieder der Gemeinschaft, in der sie sich auswirken können, in der Gesamtheit und Gesamtverbindung der Kirchenglieder." (284) "Das Wirken für die Gemeinschaft und die Durchsetzung des Einzelnen in seiner Eigenart und in seiner Fortbewegung auf das höchste Lebensziel, Gott, bedingen gegenseitig." (282) See, also, CR 49, 504ff.

Calvin's general conception: a person is not truly obedient until he takes his proper place in God's order; he does not take his proper place until *he* apprehends the order (command) of God in his heart or conscience and responds to it 'freely'; he does not apprehend until he acknowledges eagerly that his own freedom has been granted by God's grace (or God's sovereign freedom which is governed by no further necessity). His heart is truly integrated and he becomes himself, when he is integrated in the new order. The reverse is also true: he is integrated in the new order when his heart is integrated in Christ.

Accordingly, Calvin's doctrines of Spirit and Word must be seen in connection with his organic notion of church life and organization.

> Deus spiritu sanctificationis diffusus est per omnia ecclesia membra, et omnia complectitur suo imperio, et in omnibus habitat. Deus autem non dissidet ipse secum, ergo necesse est, ut nos in unum coadunet.[1]
>
> Quand l'Esprit de Dieu nous gouverne, il reforme tellement nos affections, que nos ames sont unies ensemble... que nous soyons tous conioints l'un a l'autre, un chacun selon son office.[2]

Christ is no longer with his church in the flesh, but he reigns over it "pour la puissance inestimable de son Esprit."[3] The Holy Spirit is that which organizes and binds together all the members into an harmonious structure of unity and integration. It is, by definition, a social power that dynamically liberates wills for active reconciliation in the membership of the Christian church. It distributes gifts primarily "in solidum," that is, it gives particular talents to the Body *by means of* the various individuals who are entrusted with them. There is nothing preferential about the Spirit's distribution, rather differences are purely functional. They give no member greater claim than any other before God. The basic work of the Spirit, then, is the edification or building up of the Body of Christ.

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[1] Reference misplaced.
[2] CR 51, 523.
[3] CR 46, 82.

Closely linked to the activity of the Spirit is the function of the Word in preaching and teaching.[1]

> The Church can only be edified by the preaching of this word, and...the saints have no common bond of union to hold them together, any longer than, while learning and profiting with one accord, they observe the order which God has prescribed for the Church.[2]
>
> We see that though God could easily make his people perfect in a single moment, yet it was not his will that they should grow to mature age, but under the education of the Church. We see the means expressed; the preaching of the heavenly doctrine is assigned to the pastors... It is a good proof of our obedience when we listen to his ministers, just as if he were addressing us himself.
>
> Nothing was more adapted to promote brotherly love, than a mutual connection of men by this bond, while one is constituted the pastor to teach all the rest, and they who are commanded to be disciples, receive one common doctrine from the same mouth. For if each person were sufficient for himself, and had no need of the assistance of another, such is the pride of human nature, every one

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[1] We can obviously provide merely a sketch of these dimensions of Calvin's thought, meaning that much of great importance must be neglected. His understanding of the Word involves the complex question of the place of the Bible and the sacraments, which we cannot go into. But it is clear that Calvin guards against a wooden biblicism precisely by his doctrine of Word and Spirit (in theory if not in practice). The Bible does not become the Word unless quickened by the Spirit, which means that it must drive toward and be fulfilled in the edification of the Body. Calvin's emphasis upon preaching (see below) illustrates that the Bible has inextricable social significance. Similarly, the sacraments are directed toward the confirmation of the covenant granted by the Lord which allows new social relationships: "Car comme le pain, que est là sanctifié pour l'usage commun de nous tours, est fait de plusiers grans tellement meles ensemble, au'on ne saurait discerner l'un de l'autre, ainsi devons-nous recevons la tout un meme corps de Christ, afin d'en etre faits membres." (CR 5, 443, cf. IV, 15, 6, 13, 15.)

[2] IV, 1, 5.

> would despise the others, and would also be despised by them. The Lord, therefore, has connected his Church together, by that which he foresaw would be the strongest bond for the preservation of their union, when he committed the doctrine of eternal life and salvation to men, that by their hands it might be communicated to others.[1]

The Word of God comes as an ever new command driving towards an ever new order. The command to the church and the structure of the church become effectively combined in the joining of Word and Spirit.[2] In this union the Word of God and its obedient apprehension in the members fulfills itself in the formation and deepening of the holy community, and the community anchors itself in the obedient apprehension of the Word. Consequently, for Calvin the Word must be 'preached,' 'taught' and 'spoken,' for it is by its very nature only relevant in the living social context of the church. Only when it binds people together anew and 'matures' relationships, reforming, re-expressing and renewing them, is it really the Word of God. By the same token, relationships are only renewed and made right when individual members heed the preached Word "as if God were addressing us himself." For this reason, "the ministry of men, which God employs in his government of the Church, is the principal bond which holds believers together in one body."[3] The preached Word of God comes as a special command direct from God himself, a fact that accounts exclusively for its authority.[4] On the other hand, it fulfills itself only in community: it realizes its authority in its integrative effects. These two dimensions of the Word (the command and structural dimensions) account for a deep tension in Calvin's thought regarding the actual polity of the church.

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[1] IV, 3, 1.
[2] III, 1, 2.
[3] IV, 3, 2.
[4] IV, 3, 1.

In discussing ecclesiastical government Calvin uses a phrase whose significance cannot be missed in the light of our discussion: he speaks of an administratio spiritus.[1] It means, of course, that offices of authority in the church have no independent status or superiority--Christ is the only real authority in the church.[2] They are established and evaluated with respect to their special service in the edification of the Body. Though ministers be "of inferior rank," they are to be honored because they speak the Word of God.[3] A bishop in the early church "was not so superior to the rest (of the church) in honor and dignity, as to have any dominion over his colleagues." He simply had certain "functions" that had been decreed "by the general voice."[4] There is in Calvin's thought a radical functionalization of administrative roles which corresponds exactly to the same emphasis made in economic and general ecclesiological terms.

Precisely because all churchly offices find their significance in relation to the activity of the Spirit, namely in building up the community, they must be referred finally to "the general voice" of the community in order "to guard against all infringement of the common right and liberty of the Church."[5] Calvin is clear about this. He quotes Cyprian favorably: "A priest should be elected publicly in the presence of all the people, and...he should be approved as a worthy and fit person by the public judgment and testimony." The logological reasons for the election of church officers are extremely important: the church member with the truly obedient heart (the liberated conscience) will naturally 'elect' as he has been 'elected,'[1] that is, in relation to God's proper order. (As we have seen, that is what 'election' means.) Therefore, choice or election in matters of church organization (or structure) is logically part of the "common right and liberty of the Church." The church is that one organization which is at liberty to choose with respect to its own right relationships.

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[1] CR 2, 779.
[2] 41, 84; 55, 240, etc.
[3] IV, 3, 1.
[4] IV, 4, 2.
[5] IV, 3, 15.

On the other hand, Calvin certainly did not unqualifiedly assert a democratic principle. While it is true that officers should be elected by the church, "pastors ought to preside over the election, to guard the multitude from falling into any improprieties, through inconstancy, intrigue, or confusion."[2] Calvin's reason is, of course, that so long as the world exists, the visible church can never be identified with the invisible; the elect and unelect remain mixed.[3] Furthermore, even the elect, many of whom are, perhaps, more obedient and responsive to the Word of God than the unelect, "still have much of their heart and soul occupied by carnal desires, which retard their progress towards God."[4] For the time being, therefore, Calvin places more confidence in the direct Word of God and its proclaimers as an agency of order, than in the still equivocal hearts of the people. Calvin provides the basis for a certain aristocracy of the ministers, but it is obviously a temporary, provisional arrangement. It is a refinement of the logic at work in Calvin's understanding of civil politics and law: disobedience makes necessary special forms of regulation and control.[1] The tension, however, is there, for the Word (by its very logic) presses dynamically towards fulfilling itself in a voluntary, harmonious community in which election rests with the elect.[2] As Bohatec correctly remarks: "The essential axiom can not be

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[1] The political and theological use of the same word is hardly accidental.
[2] IV, 3, 15.
[3] IV, 1, 2-3.
[4] III, 19, 4.

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1. See **60-1, above.**
2. The very tension we have observed throughout our investigation of Calvin--between the 'old order' (the order of coercion and necessity with its provisional forms of control) and the 'new order' (the harmonious order of free, voluntary obedience) is also present in the church, albeit in a modified way. Because Christ reigns in Word, Sacrament and Spirit in the Church, the 'old order' is decisively broken there and the 'new' is beginning. Therefore the hallmark of the 'old order,' coercion, is by definition excluded from it. But there remain these special and temporary forms of control within the church because the community of wills cannot yet be trusted: it still has a long way to go! Because the wills are partially redeemed, the Word of God controls the church through the ministers and elders with partial force (that is, short of actual coercion). These officers are certainly more than members like everyone else; they are in a preferential position (analogous to the preferential position of political rulers for precisely the same reason!). Their status is made necessary because of the actual or potential disobedience within the church. (One is tempted to say that the subsequent heavy emphasis upon the prestige of the ministry in Calvinism--with its requisite of a 'special call' different from, and perhaps better than the layman's 'call,' has been a formalization of this principle.)

   But by the logic of Calvin's conception of order, the Word and Spirit do not rest until they have achieved the voluntary, social harmony of wills that is the end of God's order. The 'democratic principle' in Calvin's thought is not 'another idea' in his system or 'a contradictory impulse' or anything of the sort. It is the inevitable consequence of his logic of order, very much bound up with all the important dimensions of his thought, just as the 'aristocracy of the ministry' is.

   Troeltsch sees the tension rather clearly: "The first sign of this influence can be traced in a certain democratic constitutional tendency which the Genevan experiment produced. It is, of course, possible to point out that Calvin's personal point of view was as undemocratic and authoritarian as possible; that, further, in spite of the fact that the whole community shared in the life of the Church, Calvin's Church Constitution, with its basis in the Divine Church order and with its special connection with the aristocratic constitution of the city, was still in no sense a congregational democracy, and, finally, that the Genevan Constitution itself, under the influence of Calvin, and in line with the spirit of the period, developed more in the direction of an oligarchy than of a democracy. That is all quite true. Nevertheless, disputed, that the whole community remains the original bearer of the authority of the church delivered over to it by the Lord."[1]

Calvin's conception of a new order, in part institutionalized here and now in the church, bears an extremely important implication for understanding social relationships. As we have seen, social roles within the church are radically functionalized according to the economic, social and spiritual needs of the community. The Body of Christ, energized by the Holy Spirit, is, (and becomes) a community in which members *willingly* and *eagerly* harmonize their own specific gifts with the gifts of others, for the good of all. This kind of 'self-integrating,' uncoerced system is the meaning of God's order. By their willing participation, members witness to the *real purpose and end* of social life. They are the wave of the future. They embody the overcoming of the old order.

Therefore, the distinction between church and world is decisive. Those

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in the last resort, the final effect of this interpenetration of a city-republic with a national Church was a strong impulse in the direction of democracy, towards the principle of the sovereignty of the people. The reason for that is that the whole aim of the Government was to secure the reasonable welfare of the individual which is required by the Law of Nature, and in this sense the State was to be conformable to reason." (Ernst Troeltsch, *Social Teaching of the Christian Churches*, N.Y., 1956, 628.)

But Troeltsch's concluding remark is hardly acceptable. The democratic tendency had very little to do with conformity to reason and the Law of Nature. Troeltsch's use of 'relative' and 'absolute' natural law in analysing Calvin's theology and ethics is hopelessly inadequate. It misses the whole logic of order.

[1] Bohatec continues: "...dass weder die Obrigkeit, noch die Prediger, noch ein aus beiden zusammengesetztes Kollegium allein über das Wahlrecht verfügen dürfen, *sondern das dazu schlechterdings auch die Gemeinde gehört.*" *Kirche und Staat*, 511. Bohatec, as usual, puts it extremely well: "Der Zweck aller dieser Tätigkeiten ist die Auferbauung der Kirche, des Leibes Christi, die durch die Predigt des Evangeliums, die Wahrung der reinen Lehre und die Übung der Bruderliebe, kurz, durch die Pflege und Vertiefung der *Willensgemeinschaft der Heiligen* unter dem Haupt Christus von Stufe zu Stufe verwirklicht wird." (514) See 47, 487; 51, 199. (Italics supplied: notice the apt term 'community of wills' in connection with all that has been said.)

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who manifest their obedience in the Body of Christ become a special group. Those who voluntarily take their functional place in the holy community, subjecting their wills to the word of God, are, by definition, the community. The final distinction is, of course, known only to God, but a partial distinction must be made by man. "Thus in each parish there was actually a double roll of membership: on the one side there were the true, genuine, faithful, and active Christians, and on the other those who were merely nominal or worldly...The effect of Calvinism was the separation of the pure body of communicants from the impure..."[1] As Calvin himself makes quite clear, "it is the duty of a pious man to withdraw himself from all private intimacy with the wicked, and not to involve himself in any voluntary connection with them."[2]

We have here the basis for a "new aristocracy" or a "new elite," whose credentials are not birth, wealth or position, but voluntary obedience and functional responsibility. Because "pure Christians" are related to true Order, to God's Order, they assume a privileged place. Directed by the Holy Spirit, they become a new model for society. They set its sights, and guide its action. However, their object is not typically aristocratic: they do not exclude. On the contrary, they seek urgently to extend the new community to all of society. Their whole aim is to participate in the transforming kingdom of Christ, which will, one day, be "all in all."

2) The role of the rest of society outside the church, then, falls into place. Calvin's attitude toward it is memorably put by Fröhlich:

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1. **Troeltsch, *op.cit.*, 596-97.**
2. **IV, 1, 15.**

> That God might be ruler over all the world, and that Christ might be King of Kings in power and glory before whom all rulers and nations are humbled before whom all powers of the earth are silent: that is the goal that stands before Calvin's eyes.[1]

The subjunctive form "might be" characterises Calvin's theoretical and practical line of reasoning regarding the relations of the 'new' and the 'old order.' Christ is, according to Calvin, the principle of True Order. By definition, he now rules only over the church, for it is there that voluntary obedience (the only real obedience) takes place. The rule of the church is separate from the rule of the state, for the state is still a manifestation of coercion. Yet, because Christ is the principle of true order, and because "one day" he will be Lord over all of life, he sets the standard by which even the coercive order must be run, if it is to expect to be a "legitimate sovereignty."[2] Calvin held that the order which the state ought to maintain is the order according to the Gospel.[3] For this reason, the church must proclaim the "pure doctrine,"[4] and the state must defend it in order that the world increasingly be constrained by the Lordship of Christ that Christ might be Lord.

The true order towards which the provisional, coercive power of the state drives, is fulfilled in Christ. Therefore, all the powers of the earth must serve him. If they do not, they have, by definition, no right to exist and they will "be ruined." At the same time, coercive order, which is based on necessity, contradicts the free order which is in Christ. Political authority must serve Christ and yet it cannot: its efforts can

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1. Fröhlich, op.cit., 82.
2. See footnote 5, p. 73, above.
3. See p. 74, above
4. Which is nothing else than the Gospel of God's Order.

only end in a "might be," in a subjunctive. That is the dilemma of earthly power. The subjunctive character of political action illumines two things about coercion: 1) it is subordinate to the 'new order' of Christ and, indeed, will no longer be of any use when the new order is completely realized; 2) it is harnessed to the process of Christianization. For Calvin, Christ is not in actuality Lord of civil political life.[1] He *might be* if the authorities increasingly bring themselves and their subjects under his Lordship, that is, if the power of necessity and coercion is gradually overcome by the power of voluntary harmony, the power of the Holy Spirit. In the service of Christ, coercion is its own undoing.

Consequently, the state must both protect and extend the church.

> Wie kann eine Religion bestehen, durch welche Zeichen wird sich die Kirche unterscheid~~h~~en (von anderen Genossenschaften), was wird schliesslich aus Christus selbst, wenn die Lehre der Frömmigkeit unsicher in der Luft hängen bleibt?...Die Kirche Gottes kann nicht erhalten bleiben, wenn nicht die falschen Lehrer verhindert werden, die Wahrheit in die Lüge zu verwandeln.[2]

In commenting on John 18:36, Calvin states that the church must be defended, if only "accidentally," "by appointing external discipline, and partly, by lending...protection to the Church against wicked men."[3]

Here is the basis for the so-called theocratic impulse in Calvin's thinking, although what is usually at issue is whether or not Geneva was an "ecclesiocracy." Was the church superior to the state in Geneva, did it dictate all policy? To respond with a simple yes, is to miss the intricacies of the problem. Calvin consistently rejected the control of the political and social order by the church. He was clear in saying "that the spiritual kingdom of Christ and civil government are things very different and remote from each other."[1] In principle and on certain occasions, Calvin maintained the functional separation of the two spheres. The practical suggestions that Calvin made in his Ecclesiastical Ordinances of the Church of Geneva are an important case in point. Basic to the document was the formation of the Consistory of Elders in whose hands lay the responsibility for the regulation and supervision of Genevan morals. The status of the Consistory in relation to the secular magistracy indicates the delicate balance which Calvin desired to maintain between the power of the church and that of the state. The elders were politically appointed by the secular magistrate in order to safeguard the supremacy of the state over the church in civil affairs. Further, the Consistory had no political power. Its province was to admonish and to urge 'fraternal correction' whereby the purity of the church could be maintained. However, since it was not possible to make a final separation between members of the church and of the civil community, the Consistory exercised its admonitory power over the whole civil population.[2]

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[1] The point to be emphasized is that *nothing* happened to the "thrones and dominions" in the coming of Christ. Christ is not now, according to Calvin, Lord of "all things in heaven and on earth." Eventually, he will be, but until that time, nothing about the 'world' itself has really been changed. The only center of change and transformation is the church.

[2] Quoted in Bohatec, *Staat und Kirche*, 623 (CR 8, 464, 345). Bohatec says further: "Das Hauptmotiv...der Gedenken Calvins lag vielmehr in der Überzeugung, dass es sich in dem Kampf gegen die unverbesserlichen Gotteslästerer um Sein oder Nichtsein des Protestantismus und des Christentums überhaupt handelte."

[3] Comm. on John 18:20.

According to Biéler, Calvin was able to maintain the distinction between church and state up through his final victory when he reached the zenith of his influence.[1] But while Calvin's intention was undoubtedly always to retain a strict separation between church and state, he did not succeed nearly so well as Biéler makes out.[2] Pfisterer's highly documented account makes it clear that precisely the question of moral discipline rendered the lines of jurisdiction between church and state increasingly tenuous. It is true that the ultimate power of order rested not with the church, but with God. Certainly in principle, and to some degree in fact, this conception precluded the church's power over the state or vice-versa. Even though the two spheres are dynamically related, there was, as we have seen, a fundamental logological difference between them. The term "theocracy" more accurately describes the ambiguous status of church-state relations in Geneva than "ecclesiocracy."

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[1] IV, 20, 1.

[2] We draw attention, here, to the ambiguities and tensions in the problem of separation and subordination that Calvin faced theoretically as well as practically.

On the other hand, even a theocracy requires someone to interpret correctly the order of God to the community, and to provide direction for the Christianization of the society. That, of course, is the role of the church. Its influence, under the heading of 'fraternal correction,' became totalitarian.[3]

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1. Bieler, op.cit., 128-130.
2. Biéler is obviously extravagant in his defense of Calvin. It is hard to see how the moral discipline could have been enforced without a corresponding minimization of the separation of church and state. See 130.
3. We use this term to indicate the logological factors at work in Calvin's system. It is better than "authoritarian" or some such, because it shows the direction of his view: the total society must eventually be reformed in accord with God's true order. As that is done, the state and church, as specific "authorities," lose their importance. Ultimately, God will be the direct authority over all. In the interim, the "authorities" must be turned toward that end--namely toward the total reign of God over the total society. This activity, as we have seen, spells their undoing as authorities. In contrast, the term "authoritarian" bespeaks a static idea, and does not embody the dynamic, on-going transformation of authority that exists centrally in Calvin.

The Consistory exercised extensive control over the moral life of the community, a control motivated and sustained by much more than "the necessities of the moment" (Biéler). The imperialistic moral regulations laid down by the church elders, under the guidance of Calvin, became deeply interwoven with the political foundations of Geneva.[1] These controls rigorously restricted social amusements through the use of severe civil punishment against offending parties. The church's interpretations became so basic to law and order (in the eyes of the elders and magistrates) that they virtually became part of the civil law. "(In this process) we are again confronted with a typical case of how Calvin's point of view jumbled the spiritual and worldly powers together."[2] Regulations extended to matters of belief and action considered to be blasphemous, denunciatory or otherwise subversive. The fact that heretics such as Pierre Ameaux and, of course, Servetus were tried by a civil court further confirms the jumbling of the two spheres.

In order to enforce these regulations, various means of control were contrived, consisting of observations by "city servants" (a kind of semi-police) and periodic "house-visitations" by local clergy, "from which no one could exclude himself."[3] More systematic and extensive thought-control could hardly have been devised. The Kingdom of Christ was defended and extended in an unrelenting way in Calvin's Geneva.[4]

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1. Pfisterer, op.cit., 78.
2. Ibid., 65.
3. Ibid., 98.
4. We simply have no space to go into the "welfare state" aspects of Calvin's Geneva. The government--with guidance from the church--played an important role in regulating the economy around the considerations of l'utilite commun. There is a distinct functionalism and utilitarianism at work. See Bohatec, Staat und Kirche, 709. B. N. Nelson, in Idea of Usury, shows in a most interesting way the revolutionary con-

III.

Sovereignty, Eschatology and Society

We are now in a position to draw together the two central terms emerging from this study: 'order' and 'will.' In correlating these words in a fairly concentrated way, we can perceive the logological interrelation of 'sovereignty' and 'eschatology.' Just as the word 'order' has both a command and a structural significance, so the word 'will' has a double significance: it denotes volitional action and future action in the indicative mood. It is obvious how the volitional meaning of 'will' is related to the command-dimension of 'order.' In

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tribution of Calvin to the idea of a functional economy. According to Nelson, Calvin universalized the taking of usury on grounds of its utility to the community. This marked a radical break from the Deuteronomic idea. See esp. 68. (See also Biéler, op.cit., 168.) Nelson's book should demonstrate that in no sense was Calvin attempting to set up an Old Testament community. Precisely the opposite was true!

We must, in this connection, underline an important fact about Calvin's Genevan activity. As Biéler points out (155-57), Calvin manifested a passion for creating employment for refugees and poor people who poured into economically prosperous Geneva. There was a very active policy of "réadaptation professionelle et préparation à de nouveaux métiers," along with a policy of diminishing "chômage par la création de possibilités de travail" (156). Calvin, at one point, intervened in the Petit Conseil to urge the development of weaving industry "afin de contribuer à la richesse et au bien-être de la population" (157). Bieler states: "La vie religieuse et la vie matérielle du croyant sont toutes deux soumises au même ordre de Dieu" (154).

This passion in Calvin to create work, and the almost obsessive reaction to "l'oisiveté" and "le chômage," is extensively treated by Biéler in chapter 5, "Les activités économiques" (391-476): "L'oisiveté (says Biéler) est un vice grave parce que, en plus d'une désobéisance à l'ordre de Dieu qui a commandé le travail à chacun, il est un témoignage d'impiété..." (408). "Priver un homme de son travail, c'est lui ôter la vie" (409). These sentiments obviously relate to the development--through political enforcement--of vigorous economic activity and full-employment. The use of the state to extend the Kingdom of Christ in this way is associated to the political enforcement of Reformed religion. Political authority is certainly put to use but its functions and purposes are defined for it by the supervening order of God. In a special way, as we have seen, the order of God is bound up with ecclesiological and economic action.

terms of Calvin's system, God's 'order' (his command) is his 'will.' It is this aspect of his action that is very much related to his sovereignty. As God confronts man, his will lays down the possibility of obedience or disobedience. Man rejects God's will, but God is sovereign--his will prevails, and his order is not totally undone. As disobedience is related to disorder, obedience is related to order. It is an order consisting of obedience which is God's will. In other words, God's will drives towards a structure of relations characterized by obedience. When God's 'order' is heeded, his 'order' is done.

But obedience consists in willing God's (sovereign) will. God's will contains within itself something 'above,' 'beyond' or 'before' what is done here and now. The sovereign dimension of 'will' shades into the future dimension: God's order is something that will be done. It has an eschatological implication. God's volition implies future fulfillment. An order from an ultimate God drives towards an ultimate order.

With respect to social life, these two motifs, sovereignty and eschatology, mean two things, according to Calvin: 1) God's sovereignty overcomes the disobedience of man (and his disorder). By means of Christ's act, man is elected or 'called to order' in the 'Body of Christ.' There, his will transformed, he hears God's Word and takes his proper place alongside his brother. The church is the new community representing the 'new order' of God, and its internal relations are determined neither by the necessities of tradition nor by the coercive acts of political-legal force. They are determined by the self-integrating wills of the members. The church is, to use Bohatec's term, a "community of wills," one that stands very much in tension with the 'old order.'

2) God's eschaton introduces a dynamic and progressive note into social existence. The sovereignty of God's will implies its own futurity. Those who acknowledge God's Lordship are, by definition, oriented toward his future. Meaning and purpose are provided by the 'coming' Kingdom, that is, by the realization of God's will, or by the fulfillment of his order.

These interrelated motifs set forth, in Calvin's system, a conception of society that contrasts radically with the assumptions of Renaissance humanism. It was precisely against the necessities and inevitabilities of the 'old order' that Calvin reacted. He stood over against a system of action which simply conformed to "the course of things (as) a work of destiny" (in Seneca's words). The notion of fatalism, whose counsel of resignation destroyed any leverage for social reorientation, met a staunch opponent in Calvin. Throughout, the logic of his position emphasized a reformed and a reforming 'new order.' The challenge of this logic would not die with Calvin.

John Calvin (and Calvinism) has been described in many conflicting ways. He has been called mediaeval and modern, authoritarian and liberal, tyrannical and democratic, a visionary and a creature of his times. Often it is said that he combined all or many of these tendencies within himself in a thoroughly contradictory way. However, as the result of our analysis, it would seem that one thing is sure about Calvin: few great thinkers can claim the degree of logical clarity and consistence in theory and practice that was achieved by him. It is hoped that by means of the investigation we have undertaken, many of the 'contradictory' elements will fall neatly into place and be seen in the wider context of Calvin's thought. Not that his system is wooden and cold. To say that is to misunderstand the meaning of 'logic' as we have used it. The whole point is that the dynamic, living and vital elements in Calvinism spring, not from the conflict of irreconcilable ideas nor simply from the conflict between ideas and historical circumstances. They spring from, or are reflected in, the inner dynamics of Calvin's logic of order.[1]

Nor is that to say that Calvinism is nothing more than the extension of Calvin's system of ideas.[2] Calvinism spread far and wide. It confronted new and varied historical situations, and underwent new and varied pressures. It had to adjust to new demands and withstand new challenges. Of course, it was influenced, and of course it changed. But with all its new emphases, the essential logic can be traced. As Weber saw, in no place was the Calvinist logic of order more significant than in England. At the end of the 16th century, the new order, heralded earlier by John Calvin against his humanist and Roman Catholic contemporaries, was proclaimed with new vigor by such men as Thomas Cartwright and William Perkins against their English opponents.

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[1] To speak with accuracy, we should say the logic of order which Calvin expressed. He did not 'invent' it, nor was he its only exponent. A very fruitful comparative examination could be made between Calvin's thought and that of Martin Bucer, not to mention other reformers. Bucer is particularly significant so far as the question of relating a reformed 'logic of order' to later developments is concerned, because he actually taught at Cambridge toward the end of his life, and he wrote his *De Regno Christi* for King Edward VI. I am sure he had no little influence on the thought of 16th-century Puritans, and a logological analysis of his thought would prove, I am convinced, a great deal of similarity between him and Calvin. If that could be shown (as I hope to do sometime), it would mean some substantial revisions of the leading book on the relation between Bucer and English life, Wilhelm Pauck's *Das Reich Gottes auf Erden: Utopie und Wirklichkeit. Eine Untersuchung zu Butzers 'De Regno Christi' und zur Englischen Staatskirche des 16 Jahrhunderts.* (Berlin, 1928). Pauck does not, I *believe, sufficiently* distinguish the dimensions of 'new order' that are at work in the thought of Bucer. Therefore, he too easily equates Bucer's conception of a social welfare state with the Elizabethan *raison d'etat*. Pauck even admits that Thomas Cartwright is really *closer to Bu*cer than the more typical Elizabethan Anglican, John Whitgift (156). And in other places, Pauck does not seem content with the identity between Bucerism and Elizabethanism. But Pauck does not take his uncertainties seriously enough. For example, in my judgment he superficially identifies Hooker and Bucer around the idea of a national church (159), without seeing the fundamental difference of direction that the thought of each implies. If Bucer is close to Calvin (as I believe), then he is certainly *not* close to Hooker!

[2] Nor is it to say that Genevan Calvinism came only from John Calvin's head. Circumstances were extremely important. My only point is that Calvinism can be understood as a system of coherent and logical meaning with its own independence. I am not convinced by those who argue, for example, that the Geneva theocracy was a concession to circumstance,

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and that it did not really represent Calvin's central thinking. I believe we have shown that an 'aristocracy of the Word' is quite as logical as the more democratic tendencies, that totalitarian dimensions 'fit in with' the impulse toward freedom.

To argue that Calvin had to develope the kind of city he did because of the necessities of the moment is not persuasive for the reason that his views were not the only possible ones under the circumstances. Roman Catholic, Anabaptist and other modified views were available. In fact, Calvin's views were often regarded by the Genevan citizens as unrealistic!

Chapter II

THE ELITE OF THE NEW ORDER: THE PURITANS

The term "Puritan" has been the source of much scholarly consternation. Although many different definitions have been offered, it is sometimes said that Puritans were those English Protestants fundamentally interested in radical ecclesiastical reform. Otherwise, in matters of theology and doctrine, runs this opinion, they differed rather little from their Anglican compatriots. It is difficult, say the Georges, to discover "what all the fuss was about."[1] And Rowse informs us that the attention paid the Puritans is all out of proportion to their actual importance.[2]

However, serious scholarship has long since made clear that there are specific reasons why there was so much fuss, and why the fuss was considered important in the 16th and 17th centuries.

> (Puritanism) was...more than an affair of church government, more than the logomachy of churchmen and schismatics. It was a new way of life, overrunning all the divisions which from time to time seamed its surface and threatening in each of its manifestations to disrupt the existing society. Eventually it was to subdue English civilisation to an attitude of mind, a code of conduct, a psychology, a manner of expression, the vitality of which far outran the particular forms of religious life which sprang up

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1. Op.cit., 341. In his article, "A Social Interpretation of English Puritanism," Journal of Modern History (Dec., 1953), 332, C.H. George defines the Puritans exclusively as "those people in the Church of England who wanted to institute further reforms in the national church worship." Throughout their book, the Georges put "Puritan" in quotes, as though it were not really a legitimate term. As we shall make apparent, it is hard to treat the Georges' ideas seriously.
2. Op.cit., 464. As with the Georges' book, one can only rub his eyes in unbelief when he reads Rowse. For example, Rowse states in his characteristically cavalier way that "theologically, Whitgift was as much of an orthodox Calvinist as Cartwright." (469) Or, we are told, "like Whitgift, (Hooker) was nearer the Puritan point of view doctrinally than he was to the Roman." (485) These conclusions are fantastic.

> from time to time in the course of its irresistible advance.[1]

Haller's definition is particularly helpful because it designates Puritanism specifically as a new way of life, whose central characteristics are clearly delimitable, even though they manifest themselves in various forms. He continues: "The disagreements that rendered Puritans into presbyterians, independents, separatists and baptists were in the long run not so significant as the qualities of character, of mind and of imagination, which kept them all alike Puritan."[2] Puritanism was, indeed, a distinct

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1. William Haller, The Rise of Puritanism (Harper Torchbook, 1957), 18. In this classic account, together with his equally important Liberty and Reformation in the Puritan Revolution (New York, 1955), Haller demonstrates that the deep continuity in the development of Puritanism centers around the unrelenting zeal to proclaim the Word in pulpit and press. The Puritan brings a new word which drives towards a New Jerusalem. Haller shows how many of the implicit dynamics of what we would call the Puritan logic of order spell themselves out in the process of proclamation.
2. Ibid., 17. We are, of course, confining ourselves to particular manifestations of Elizabethan Puritanism in this essay, and, therefore, we shall not be directly concerned with the rise of Separatism and Sectarianism within Puritanism. These aspects began to develop in the late 16th century, and flourished just prior to and during the Puritan Revolution (1640-1660). It is important, in passing, to mention this continuity which points to a coherent center of thought and action in Puritanism as a whole. M.M. Knappen in his solid (though in places very disputable) work, Tudor Puritanism: A Chapter in the History of Idealism (Chicago, 1939), underlines the same point: "The term 'Puritan' is used in this book to designate the outlook of those English Protestants who actively favored a reformation beyond that which the crown was willing to countenance and yet stopped short of Anabaptism. It therefore includes both Presbyterians and Independents, Separatists and Non-Separatists." (1) Knappen, Haller, Perry Miller (Orthodoxy in Massachusetts, Boston, 1959) and Horton Davies (The English Free Churches, London, 1952) all show how deeply united were the Presbyterians and the Separatists, or Brownists. Pushing the emphasis upon continuity still further, Haller argues that the sects were very little influenced by Continental Anabaptism, and were, rather, simply the further extension of implicit dimensions of Puritanism itself. (See esp. Rise of Puritanism, 174-6 and ftnt. 2 on 390.) In agreement, Frank, in his The Levellers (Cambridge, 1959), refers to the strong Calvinist-Puritan roots in that sect. He does not mention the Continental Anabaptists. Certainly, one of the distinctive elements of the

system of meaning and values with an indomitable logic that shook the very foundations of Elizabethan and Stuart society. If certain modern scholars have trouble recognizing it as such, contemporaries were hardly so undiscerning. One would not have found Elizabeth, James or Charles, Whitgift, Bancroft or Laud questioning the distinctiveness and singular vitality of Puritanism. They all felt its threat and knew its power.[1]

It is the characteristic logic of order of the Puritan system that needs analysis in order to discover where the real issue between Puritanism

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Puritan sects was their active endeavor to *extend* the patterns of the church to the society, in one way or another. (In this connection, see A.S.P. Woodhouse, *Puritanism and Liberty*, London, 1938.) Such a spirit cannot be said to characterize Continental Anabaptism, whatever its influence may have been upon such communities as the Scrooby and Gainsborough groups.

The general point is that 'Puritanism' in all its variety decidedly *does* describe a point of view that can meaningfully be contrasted to Anglicanism. It is a body of opinion with its own distinctive logic of order. In the light of impressive scholarship, the Georges' conclusions are hardly worth mentioning. "Puritanism" means for them an incidental, lunatic fringe consisting of Cartwright, Travers and Udall, and existing but a brief time. (They do not even deal with Separatism and the whole Massachusetts exodus!) They inform us that there is no evidence that "Puritanism" between 1580 and 1640 had any appreciable influence on the Puritan Revolution! Whatever connections there be are "devious." Their whole thesis is quite inadmissible.

For a fascinating account of the positive relation of Puritanism to the deep-seated revolutionary events taking place in ecclesiastical, social and economic life in England between 1583 and 1640, see Christopher Hill's monumental *Economic Problems of the Church* (Oxford, 1956).

[1] Anyone who doubts the substantial threat to Elizabethan society by the Puritans should read the exciting accounts of the Parliamentary activity of the Puritans especially between 1584 and 1601 in J.E. Neale's classic work, *Elizabeth I and her Parliaments*, 2 vols., (New York, 1958). Even though the Puritans were never more than around four percent of the population (see Ernest Barker, "Puritanism," *Church, State and Education*, Ann Arbor, 1957), they were an extremely well-organized and influential group. Neale concludes his study with these significant words: "From the constitutional point of view, the most important theme in our story is the relationship of the Puritan Movement to parliamentary development." (II, 436) Had they won their way in Parliament, "stark revolution" (II, 149) would have transformed English political, social and religious life.

and Anglicanism lay. When that is the focus, some of the confusions and unclarities fall away, and it becomes easier to determine who can and who cannot properly be called Puritan. Of course, the great bulk of Elizabethan Puritans were concerned with ecclesiastical reform. But to limit the term to them is to overlook significant Protestant thinkers who, upon close scrutiny, deserve the title every bit as much as Thomas Cartwright, Walter Travers or John Field. The point is that agitation for church reform points to something far more basic than simply ecclesiastical adjustments; it points to a method of thought and action that, as Whitgift and Hooker plainly saw, involved conclusions totally incompatible with the old order of English society. In the last analysis, whether the logic was expressed in Parliamentary admonitions and bills, subversive tracts of church reorganization, sermons, 'prophesyings' or university lectures and learned pamphlets did not much matter. It was the logic itself that counted.

The personal relationship of John Calvin and Theodore Beza to Tudor Puritanism should have provided the clue that Puritanism amounted to more than 'genevating'[1] the Church of England. When, for example, in 1551, John Hooper, the bishop of Gloucester, was imprisoned because he refused to wear vestments and even denounced them from the pulpit, Calvin agreed with Hooper that vestments ought to be abolished, but expressed regret at Hooper's unstrategic intransigence.[2] During the Edwardian period Calvin maintained a consistently conciliatory attitude toward Cranmer and the

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1. The term is Archbishop Bancroft's. McNeill mentions that Bancroft speaks of 'Scots genevating' and 'English scottizing.' Op.cit., 320.
2. Ibid., 309-310. See also Knappen, op.cit., 85-90, for a discussion of the same event.

Anglicans.[1] Then, when the Marian exiles arrived in Europe (1553-1558), he, like other Reformers in Switzerland, opened Geneva to the emigrés, and sponsored the formation of an exile church there. In other words, he helped to sow the seeds for the kind of ecclesiastical agitation that was to develop upon the return of the emigrés, while at the same time, he tended to discourage open conflict over church orders.

Calvin died in 1564 before the issues were really drawn, but his successor, Beza, manifested a comparable attitude of ambiguity toward the Puritan movement. In 1566 he wrote Archbishop Grindal, himself rather soft on Puritanism, in clear support of the movement.[2] He also supported the Admonition to Parliament of 1572. However, in 1591 he confided to Whitgift that he "never had the intention of opposing the ecclesiastical polity of your Anglican Church."[3] It is, no doubt, this ambiguous attitude[4] which accounts for the fact that some of the returning exiles continued within the Anglican fold, while others joined the Puritans.[1]

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[1] However, Calvin by no means took an agreeable view of the Henrician formulation that the King was "Supreme Head and Christ." For example, in his Commentary on Amos, vii, 13, he writes: "Qui inito tantopere exulterunt Henricum regem Angliae, certe fuerunt inconsiderati homines: dederunt illi summam rerum omnium potestatem: et hoc me semper graviter vulneravit. Erant enim blasphemi, qui vocarent eum summum caput ecclesiae sub Christo..."

[2] G. Yule, "Theological Developments in Elizabethan Puritanism," Journal of Religious History I, 1 (June, 1960), 16-25.

[3] McNeill, op.cit., 315. McNeill mentions, on the other hand, Beza's controversy with Adrian Saravia, a friend of Hooker's, in which he "created the impression of hostility to an episcopal polity." It simply further emphasizes the equivocation on this matter.

[4] In the Teaching of Calvin (London, 1950), A.M. Hunter asserts that Calvin "was mastered by the vision of a world-wide church one in Christ, and he regarded it as one of the great ends of his earthly mission to promote its realisation." (161) Ever and again he attempted to hold a mediating position, by which doctrinal extremes could be reconciled. "He was," says Hunter, "prepared to allow a large measure of liberty on other matters such as ceremonial usages..." (163) In 1552, he replied to Cranmer that some sort of ecumenical meeting is imperative in order "by a unanimous decision (to) hand down to posterity some certain rule of faith..." "As to myself, if I should be thought of any

Such equivocation on the part of the master himself and his successor only underlines the fact that Calvinist influence can neither be divorced from nor reduced to agitation for church reform. In any event, direct Calvinist influence there most certainly was, mediated in many ways, by many different people.[2] But here again, we totally misunderstand the relation between Calvinism and Elizabethan Protestantism, if we merely identify the former as a collection of assorted doctrines (such as predestination, supremacy of scripture and the like), and undertake to trace their respective fortunes individually. As we demonstrated in the

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use, I would not, if need be, object to cross ten seas for such a purpose. If the assisting of England were alone concerned, that would be motive enough for me." (Quoted by Hunter, 164) It would seem that this reconciliatory attitude on the part of Calvin (and Beza) explains the ambiguity at work here. See also McNeill, op.cit., 217.

[1] One notable Marian exile who returned to an important post in the Anglican church was Edmund Grindal, a rather strong Calvinist and (it could therefore be argued) an unsuccessful Archbishop of Canterbury (1575-83). His vacillation toward the Puritans no doubt accounted for Elizabeth's choice of Whitgift, a staunch anti-Puritan. The Georges and others make much of these Calvinists among the Anglicans in order to prove that Calvinists were not necessarily Puritans. While it is true the lines were not, during this early period, sharply drawn, it by no means follows that the Elizabethan church was Calvinist. There was undoubtedly some influence, but it was at best tenuous and temporary. (See below, 184.)

[2] The Georges deny Calvin's influence (190), but they, as usual, fly in the face of the preponderance of evidence without any serious justification for their view. Says Davies: "The spiritual father of the Puritans was indeed John Calvin, and their spiritual home was Geneva...", op.cit., 13. For a resumé of the various liturgical and other means of Calvinist influence in England, see 15-19. On Calvin's influence see also Knappen, op.cit., 135; Haller, op.cit., 84-85; McNeill, op.cit., 310-314; cf. Yule, op.cit., 20-1. Haller rightly stresses that Puritanism cannot be reduced to John Calvin. But neither can it be understood without him.

We need to emphasize that Calvin was by no means the only influence. Bucer, as we mentioned above, was of great importance, as was Bullinger. However, I am of the opinion that the impact of especially Bucer and Calvin was complementary. (See footnote, lat 110, above.)

previous chapter, Calvinism must be seen in its wholeness, with its central emphases and thrust. Its connection with England must be similarly gauged. In such a light, the deep coherence between Calvinism and Elizabethan Puritanism--in sharp contrast to the Anglicans--cannot be missed.

I.

Thomas Cartwright (1535-1603)

In 1564, the year of Calvin's death, Cartwright inaugurated his career as an Elizabethan disputant in a formal debate that was, in a way, a dramatic preview of things to come. He was at the time a fellow at Cambridge University, and, apparently because of the respect he enjoyed, he was chosen to refute the case for monarchy before none other than Queen Elizabeth herself. He argued that neither God nor nature ordains monarchy, for "mere men," he said, "require a fellowship of labour and counsel."[1] The Queen was evidently impressed by the whole debate, though, for fairly obvious reasons, she was particularly pleased with Cartwright's opponent. She could not foresee that the Cambridge fellow who had harmlessly challenged the foundations of her throne was, in but six short years, to bring to a sharp focus a vigorous movement that would provide the severest internal threat of her entire reign.

While Cartwright was aloofly studying theology and law in Cambridge and London, the sporadic rumblings of Puritan opposition could already be heard. The twin tenets of Elizabethan religious policy, supremacy and uniformity, provoked the various phases of the 'vestiarian controversy' during the 1560's. It was not only that extremist and moderate sentiment came into conflict regarding "things indifferent." A much more fundamental question was raised by the Queen's enforcing the use of vestments: Did the secular ruler have the last word in ecclesiastical affairs or not?[1] Could the emigrés, recently returned from their Continental schooling in the ways of the Reformed church, abide the terms of the Supremacy Act of 1559 which described the Queen as the "only supreme governor in this realm ...as well in all spiritual and ecclesiastical things or causes as temporal"?[2] Many thought not, although Elizabeth and Archbishop Parker were bound to see that they should. "God save us," said Parker, "from such a visitation as Knox has attempted in Scotland; the people to be the orderers of things." Convinced that the Queen knew best and that the wages of divided authority is social chaos, Parker staunchly upheld the supremacy of the crown in religious affairs. His stand resulted in the expulsion of certain students from Cambridge--the center of the agitation, but the general turmoil was simply a prelude of what was to come.

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[1] Quoted in A.F.S. Pearson, Thomas Cartwright and Elizabethan Puritanism (Cambridge, 1945), 14.

There is no evidence that Cartwright took part in the controversy, nor that he ever thought it particularly crucial. It is probably because of his detached attitude that he was appointed preacher at the University in 1567, and then, in 1569, Lady Margaret Professor of Divinity. Cartwright's interests lay at a deeper and still more explosive level; on the basis of his study of scriptures, he became preoccupied with questions of church government. His opening series of lectures was delivered on the first two chapters of the book of Acts, in which he contrasted what

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1. Knappen, op.cit., 187-195.
2. Neale, op.cit., I, 83, remarks that "it is not surprising that the first phase of the Elizabethan Puritan movement was a struggle over vestments: it was the aftermath of the 1559 Parliament."

appeared to him to be the simple, consensual polity of the early church with the hierarchical and authoritarian form of the Anglican church. He urged, among other things, that archbishops and archdeacons be abolished, that each church be governed by its own minister and presbytery, that pluralism and non-residence be abolished, that each minister be attached to one specific congregation, and that ministers be called by the consent of the whole congregation, rather than by the hierarchy. The far-reaching revolutionary implications were plain enough to students and University authorities alike. The lectures naturally caused an immense uproar, and after so brief a tenure, Cartwright was deprived of his professorship and expelled from the University in 1570. According to the leading authority on Cartwright, "the chief result of his conduct was the resuscitation and reformation of English Puritanism. He made the question of polity the distinctive and foremost note of the movement."[1] This act secured his position as 'head' of Elizabethan Puritanism.

However, the concern Cartwright has with church polity in these inaugural lectures, as well as in his subsequent debates with Whitgift and in his other writings, points, as we hinted, to something deeper in Puritan mentality. It points to a radically new conception of social life and authority; it points to a new order. Without question the essential logological distinction between Cartwright and his Anglican antagonists was over the relationship of state and church,[2] or, in the language of our previous chapter, the relationship of coercion and freedom.

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[1] Pearson, op.cit., 44.

[2] See, for example, A.F.S. Pearson, Church and State: Political Aspects of 16th-Century Puritanism (Cambridge, 1928). At 8 Pearson contrasts the conception of the Anglicans with the "Two-Kingdom Theory" of the Puritans. Chapter II (9-40) is a helpful analysis of this essential theory in Puritanism.

> Where for as muche as our Saviour Christes kingdome was not of this world / and that against horrible disorders in his church / punishable by the sworde / he did not (one extraordinary whipping excepted) draw yt: and considering that this lawfull ordinance of God / is not onely in the churche / but withowt: yt is manifest that our Saviour Christ in respect off his mediatourship towardes us / exerciseth not the civill sword. For in that he said his kingdome was not off this worlde / he made an opposition not unto the wicked off the worlde / as other some times: but unto Cesars authoritie / which was the ordinance of God / whereto he was falsly charged to have made claime...And in that the autoritie off the sword in heathen princes (although not a like used) is the same ordinance of God that (is) in Christian (magistrates): the one proceeding off God immediately / and not from our Saviour Christ as mediatour / the other doth likewise.[1]

> For that which may be conveniently wonne with a worde / shoulde not be gotten by the sworde: and that which may be gotten to bee donne with conscience / should not be essaied by compulsion.[2]

It is Cartwright's underlying differentiation between old and new order, as well as his method of elaboration, that thrusts him squarely into the Calvinist tradition. If he never succeeded in becoming the 'English Calvin' he aspired to be, because, with his one-track mind, he lacked Calvin's brilliant comprehensiveness and perception, he did succeed in enunciating the central conclusions of the Calvinist logic of order.

Basic to Cartwright's system of thinking is the idea that God is bound neither by his commands, nor by the structure of order he has created.[3] God is free or sovereign over order; he is not identified with it. The direct word of God, which betokens his inbreaking sovereign freedom,

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1. The Second Reply against M. Doctor Whitgift's Second Answer touching the Church Discipline, 417. (Referred to henceforth as SR.)
2. SR, 234.
3. D.J. McGinn, Admonition Controversy, 247. This book contains a valuable collation of primary resource materials from the writings of both Cartwright and Whitgift. The references used here are usually direct quotations from their works. (Referred to henceforth as McGinn, AC.)

exacts from man a corresponding voluntary or consenting obedience within the conscience. Nothing short of free, conscience-felt submission to the sovereign God himself will do. "No man can glorify God in anything but by obedience; and there is no obedience but in respect of the commandment and word of God: therefore it followeth that the word of God directeth a man in all his actions."[1] "If there be anything wherein we do not according to that which is commanded (by magistrates), it is because we cannot be persuaded in our consciences that we may so do (whereof we are ready to render a reason out of the word of God)..."[2]

Accordingly, the command of God fulfills itself in that structure of relationships in which the free-willing individual conscience converges with the harmonious integration of all, in which voluntary obedience to God's command issues in proper social order. For Cartwright that structure is the church, or the Body of Christ. "Wherefore whosoever in feeling to profite the church according to his calling / doth anything to the preservation off this body: he doth yt as an eye / an arme / an eare / or as some other member..."[3] The church is "the depository of the conscience," to use a phrase translated by Cartwright from Walter Travers' Latin edition of A Full and Plaine Declaration of Ecclesiastical Discipline (1617). It is the context of obedience.

The church may be properly designated a new order, because it is the

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1. Works of Whitgift (London, 1851-53) in three volumes, I, 190. These volumes comprise most of the primary material constituting the debates between Whitgift and Cartwright. (Referred to henceforth as WW.)
2. WW, I, 79.
3. SR, 415. At WW, I, 149, Cartwright continues in the same vein: "For, by how much every man doth excel his fellow in the gifts of the Holy Ghost, by so much more he ought to employ himself to the benefit of others; so that in a manner he should become (as it were) their servant to do them good..."

result of the revolutionary "obedience of the Sonne," by which "all redemption is purchased unto us:...which obedience was most specially and most signally declared in the shedding of his blood."[1] It is decisively 'in Christ'[2] that the conscience is set free from the bonds of sin and recalcitrance against God's word, and, therefore, from the bonds of disorder. Christ alone willingly followed the command of God (his law),[3] and, as a result, willingness becomes the hallmark of his church. "This libertie as hathe been shewed / is a peece off the libertie which Christ hath purchased unto his churches / by the shedding of his precious bloud."[4]

The only tolerable authority in the church is the word of God made manifest in Jesus Christ. That voluntary, conscience-felt obedience which is in Christ must characterize the system of authority within the church. Since Christ is the direct and exclusive head of the church,[5] his elected members embody (or institutionalize) that voluntariness which characterizes his headship. Precisely their ability to consent freely with respect to right order is what distinguishes them as the Body of Christ; it is their full inheritance as sons of God. Against this background Cartwright lashes out at Whitgift:

> It is no smale owtrage yowe doe the churche of God / to account of yt / as of an ignorante multitude. For onlesse yowe meane the churche / when yowe saye / then a thousand other whiche be ignorant: yowe speake beside the matter / seeing wee doe not permitte either examina-

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[1] A Commentary upon the Epistle written to the Colossians (London, 1612), 47.

[2] On the basis of my research in Cartwright and Perkins (certainly, in their different ways, two leading expounders of the Puritan logic of order), I cannot agree with Knappen's judgment that there is virtually no Christology in Tudor Puritanism. Op.cit., 376.

[3] SR, 96.

[4] SR, 226.

[5] SR, 410-11: "If Christ be onely head: then that I set downe / that the civill magistrate is head of the commonwealthe / and not of the church / standeth."

> tion / or election off the ministers to every multitude / and blinde assemblie: *but unto those onely / which make an open / and cleare profession off the trewthe.*[1]

Cartwright's preoccupation with consensual church polity is hardly to be explained as the result of an eccentric or arbitrary compulsion simply to reform the church. As with Calvin, the logic of order in these matters is quite consistent: the capacity to elect rests with the elect. His whole analysis of church life and organization makes the dimensions of this logic clear.

For Cartwright the congregation must be so ordered that "Christ might rule and reign in his church by the scepter of his word only."[2] At bottom, the word of God is that which calls forth a new community with distinctive patterns of organization and action. Indeed, the word would be incomprehensible to Cartwright and many of his fellow Puritans apart from such activity. The word of God, after all, demands *new* obedience issuing in a *new* order, "as though matters of discipline and kind of government were not matters necessary to salvation, and of faith."[3] It is, therefore, first to Scripture, as the written record of the word of God, that one must go to determine the character and structure of the Body of Christ.[4] There God "has set before our eyes a perfect form of his church."[1] The central characteristic of that 'perfect form' is the preaching of the word to a specific community by an elected pastor. According to Scripture, says Cartwright, preaching is and must remain public or social. It does not serve the pastor alone, nor isolated individuals; on the contrary, the word is regularly proclaimed for the "common profit" of a given congregation: "forasmuch as it pertaineth to the commoditie off the whole body / that the part which he (the preacher) hath the nourishment off / be well preserved."[2] The purpose of the word is the dynamic edification of the church.

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[1] *SR*, 130; italics supplied.

[2] McGinn, *AC*, 374.

[3] *WW*, I, 180-1.

[4] It is often argued that the Puritans, and Cartwright in particular, were first and foremost Biblical literalists, grounding their entire position on proof-texts. There is a real question, however, whether such a person as Cartwright was quite so 'literalistic' as has been implied. In a letter *To a Godly and a Zealous Lady*, he states that if a Biblical text contradicts the "general tenor of the Bible's teaching," the spirit ought to be preferred to the letter. That is hardly an expression of literalism. (See *Cartwrightiana*, ed. A. Peel, L. Carlson, London, 1951. See also Davies, *op.cit.*, 27, for the same view.) Along the same line, Pearson in *Church and State*, 124-5, remarks: "The

Consequently, Cartwright was dead set against the homilies, or stereotyped readings, that passed for sermons in Anglican communions. A genuine sermon must apply the word of God to "present circumstances" and to the "change of times."[3] Very significantly, Cartwright remarks: only

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real reason why the Puritans held many of their distinctive tenets was not necessarily because Scripture enjoined them; they sought Scriptural support because they already believed in or were inclined to such tenets."

Furthermore, the Puritan position is hardly exhausted by calling it literalist or Biblicist, unless it be assumed that there is in fact one clear 'Biblical position' which can be readily extracted from the Bible. The question is why the Puritans emphasized the brand of Biblical interpretation they did, and what the particular coherence or logic of their position was. Was there not something more at work than a 'wooden' use of the Bible? Our analysis of the logic of order in certain Puritans attempts to suggest that there was, and it suggests at the same time that there were quite consistent reasons why the Bible itself was regarded as an expression of the word of God, calling for new obedience and new order.

Finally, Cartwright's generally Puritan emphasis upon the centrality of the preached word within particular congregations--that is of an interpreted or 'living' word--militates against an oversimple understanding of the Puritan view of Scripture. Cartwright argued heatedly that simply reading the Scriptures aloud has no saving effect. Hooker took strong issue with that point. See Hooker's Laws, II, 76-9. (See also our note on Calvin's view of Scripture, ftnt. 1, page 95, above.)

[1] WW, I, 176-7.

[2] SR, 346.

[3] SR, 363ff. Cf. Walter Travers, A Full and Plaine Declaration of Ecclesiasticall Discipline, 80: "Here the Pastour had need of great and

the minister, as preacher of the word, "is the mouth of the Lord from him to the people."[1] "The guiding and ordering (of) the whole body is to follow the voice (of the minister)."[2] That is to say, nothing prescribes or predetermines the dynamic upbuilding of the new order of Christ, save the living word of God spoken in ever new contexts to the church. The particular sermon must be determined by the minister in relation to the present situation and status of a given community; what will be said cannot be decided out of context by some central church authority that distributes the same message to many different congregations. To generalize the word of God, to rob it of its specific communal significance, is, according to Cartwright, to kill it.

By the same token, word and sacrament may not be separated, as they were in the Anglican church, nor may there be any private sacraments. A sacrament simply signifies the social thrust of the preached word of God.[3] They are two inseparable aspects of the same thing:[4] the Lord's Supper is "a seal and confirmation of the promises of God unto us (and) a profession of our conjunction as well with Christ our Saviour and with God as also...a declaration and profession that we are / at one / with our

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profound knowledge to know the change of times, the diversitie of things, the variety of persons, and to deale thus or otherwise, according to that variety and difference." In this connection, we want to emphasize the implicit relation in Puritan mentality between the word of God and what is 'new.' The importance of this idea of preaching in contrast to the Anglicans (for whom the word of God was always related to the 'old') cannot be exaggerated.

[1] McGinn, AC, 157.

[2] Directory of Church Government (1644), no pagination.

[3] This fact is illustrated by the conflict between Cartwright and Whitgift on whether "take ye" (you plural and collective) or "take thou" (singular) should be used in the communion service. Cartwright, of course, favors the collective or social interpretation. (See Hooker's Laws, II, 333, ftnt. 3.)

[4] McGinn, AC, 200-205.

brethren..."[1] Private sacraments, like stereotyped homilies, tear the heart out of God's new creation.

Because the minister, as preacher and administrator of the sacraments, fulfills his calling only in relation to a specific congregation, that congregation fulfills itself only when it 'calls' or elects him.[2] The preached word of God does not order aright unless it converges with conscience-felt, voluntary obedience or consent. The minister, above all, may not impose himself, for that would override the decisive consensual character of the new order, nor may he be imposed by some hierarchical authority.[3] That would introduce coercion where, at all costs, liberty of Christian conscience must prevail. Cartwright even goes so far as to say that if the minister is not called "there is no obedience."[4] The obedience of the preacher is manifested only in the context of the free decision of the congregation, just as the congregation's obedience is manifested only in response to the unstereotyped word of God. Election of the minister, on the basis of proper examination, takes place "so that the consent of the churche in the election of the ministrie / being profitable unto the godlie / and those which are trewe sheepe / that their

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1. Ibid., 239. Cf. WW, II, 61.
2. Cartwright was strongly opposed to the Anglican custom of pluralism and non-residence whereby a clergyman could have several different parishes, or be rector of a parish and not be there very often. As we have seen, the role of pastor made no sense to Cartwright apart from his constant and direct contact with one congregation. For an interesting analysis of the conflict between Whitgift and the Puritans on this point and the socio-economic implications, see Hill, Economic Problems of the Church, 244ff. Hooker's view is somewhat less rigid than Whitgift's; see Laws, II, 462-474.
3. Cartwright claims that there is no love of the minister where coercion or external control is brought to bear. The essence of the relationship between preacher and congregation is 'freedom' or love. The minister must not be "thrust upon (the people) against their wills." WW, I, 375.
4. SR, 337.

love maie abounde towardes their minister / and in respect off the Hypocrites / and goates / that they maie be more inexcusable before God / and lesse hurtefull to men."[1]

"Election made by the people where everyman giveth his voyce," according to Cartwright's translation of Travers, "are compared by some to a banket, where everyman bringeth his dish: which is so much the daintier the more there be that come unto it."[2] Or, as Cartwright himself says to Whitgift:

> I would ask if the church be not in as great danger when all is done at the pleasure and lust of one man, and when one carrieth all into error, as when one pulleth one piece with him, another another piece, and a third his part also with him. And it is harder to draw many into an error than one, or that many should be carried away by their affections than one;...(Even though ecclesiastical monarchy might be said at times to keep the peace) yet the peace which is without truth is more execrable than a thousand contentions. For as by striking of two flints together there cometh out fire, so it may be that sometimes by contention the truth which is hidden in a dark place may come to light, which by a peace in naughtiness and wickedness, being as it were buried under the ground, doth not appear.[3]

It is not simply any kind of order and peace that is desired within the church, but the specific peace and order of God that demands heartfelt human participation and response. The criterion of such participation is, as we have seen, "an open and clear profession of the trewthe." Nothing else is required. The word of God is a radical equalizer: it places all on the same footing before God. None of the social distinctions of the old order obtain within the new community,[4] for every member of the

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1. SR, 230-1.
2. Full and Plaine Declaration, 30.
3. WW, II, 238.
4. WW, II, 356.

Body of Christ has a voice on the basis of his assumed election by God.[1] It is even true that God often chooses the poor and simple before the rich and noble, although "I plainely affirme that manie of the Nobilitie and gentrie are Zealous and Religiouse." "...The common and most usual calling off God / resteth in more off the poorer then off the richer sorte:

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[1] There is in Cartwright the same ambiguity over the question of certitudo salutis that there is in Calvin. "Although we owght charytably to thinke," he says, "that he that hath given good tokens off repentance / hath trewlie repented / and there fore is off the electe church of God: yet that foundation alwaies remaineth / that when the question is of another man's election / God knoweth who are his," SR, 171. This ambiguity is not unimportant in evaluating Puritanism. There is always present in Cartwright's and Perkins' expressions a guard against a crude empiricism in matters of salvation. It is God who decides not man, and the sovereign decision always rests with him. In terms of our scheme, such a reservation on the question of certitudo salutis is quite logically consistent with the emphasis on the sovereignty of God. It is, further, important to note that the nature of church organization advocated by Calvin and the Elizabethan Presbyterians (at least) articulated this ambiguity, as over against, say, strictly Anabaptist forms. As ftnt. 1, 128 makes clear, there are both sheep and goats within the church. Presbyterians urged uniformity and a parish (not a gathered) system. That means that the lines of division between saved and unsaved always remain relatively open and fluid: one could not be sure simply on the basis of membership, nor of any ready-made discipline. (That altered somewhat with the separatists, though they also advocated uniformity.) It will be recalled that Calvin vacillated somewhat on the question of discipline as a mark of the genuine church (just because, I think, of this built-in equivocation). Also, the establishment of 'pure' and 'impure' members was never completely clear-cut. That same vacillation is certainly present in Cartwright and Perkins.

Knappen argues that Weber far and away exaggerated the importance of certitudo salutis in Calvinism and Puritanism. It is, he says, "only one small point in a maze of doctrines, and the facts of every day Puritan existence suggest that in reality the average Reformed churchman, like Calvin himself, worried very little about securing this assurance." (Op.cit., 348) However, if there is an ambiguity, the concern with salvation was certainly not a "small point." What Knappen misses and Weber saw is the strong relationship between the electing will of God and the electing will of the chosen man. That is, God's decision makes a manifest or empirical difference in the world of human action. Where there was old disobedience, there is new obedience; where there was old order, there is new order. Election means a new conscience and a new way of acting; it is, by definition, discernible. Therefore, the concern to draw up some kind of criterion between old and new man was central in this logic of order. As we shall see in Perkins, this concern was far from negligible. (Cf. Yule, op.cit., 23.)

that the riche and noble that have received that benefite of this holie callinge / maie learn therby the better to esteeme the treasure they have / and the faste to hould yt."[1] In other words, every member of the Body stands by his own personal obedience, and not by the traditional rank and status of the world. The only social distinction that makes any difference to Cartwright and his fellow Puritans is the one that exists between the new and the old order, between the church and the world. God is not bound by the way things are or have always been; he elects whom he will, and on the basis of his free, sovereign election alone, is the member's status and function sealed.

Accordingly, "simple men which carry no great countenance or shew will undoubtedly do more good unto the church..."[2] "They are the church of God, although they be called sheep in respect of their simplicity and harmlessness, yet are they also for their circumspection wise as serpents in the wisdom especially which is to salvation; and how vile account soever you will make of them, they are the people of God..."[3] Each member was to have a part in determining the order of the Body of Christ: "none," said the First Admonition to Parliament, in describing the early church, "came to be over the people but by their voices and consents."[4]

At the same time, these Puritan leaders could not abide any purely democratic polity within the church. It was impossible for 'mere men' to make any final judgments between the sheep and the goats, and since the view of Cartwright and Travers favored an established, uniform church, a number of goats were likely to participate in the vote. For this reason,

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1. *SR*, 10-12.
2. McGinn, *AC*, 472-3.
3. *Ibid.*, 449-50.
4. *WW*, I, 411. Cf. *SR*, 140.

the elders and other ministers in a given locale "must goe before the people in the election."[1] They must supervise the examination and the vote regarding a prospective minister, although if all members "were so taught of God" there would be no need for such supervision. It is a concession to necessity. If there were no corruption in the congregation, there would be no fear of choosing unworthy people. Total obedience would coincide with total order.[2]

As it is, the ministers and elders, once elected, compose a provisional center of special authority. They, after all, are the designated guardians and proclaimers of the word. Cartwright sketches the relationship among the various authorities in the church as follows: "For, in respect of Christ the head, it is a monarchy; and, in respect of the ancients and pastors that govern and with like authority among themselves, it is an aristocraty, or the rule of the best men; and, in respect that the people are not secluded, but have their interest in church matters, it is a democraty, or a popular estate."[3] The 'best men' should be classified according to the four 'apostolic' and scriptural offices,

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1. Full and Plaine Declaration, 29.
2. We call attention to the similarity of this formulation with the position of Calvin. In ftnt. 2, 99, we described the elements of corruption still present within the church and pointed out that for Calvin this condition modified or limited the amount of freedom each believer could enjoy in the existing church. All coercive measures and arbitrary power were by no means excluded from the church. Yet, this situation was provisional, not ideal. Coercion was in no way a part of the ultimate 'new order' already breaking in. So long as the world existed, the Calvinist would have to adjust in some tolerable way the claims of free obedience with the necessity of "holding owte" wilful disobedience. But while he made 'concessions to necessity,' as we say, the final thrust of his position was of the greatest importance in introducing a conception of social order that devalued and subordinated political and legal forms of coercion.
3. WW, II, 390.

bishop, minister, elder and deacon. The offices of archbishop and archdeacon should be abolished (a recommendation that, naturally, threatened the whole hierarchical structure of the Church of England). Above all, these offices should be radically functionalized, and, therefore, generally levelled in terms of power and status: the authorities must not be called "simply governor or moderator *but governor or moderator of that action and for that time and subject to the orders that others be and to be censured by the company of the brethren as well as others if he be judged any way faulty*."[1] Cartwright argues that even St. Peter retained his office on this basis; he was "chosen of the apostles unto the presidentship in those actions".[2]

Cartwright makes a great deal of the principles of consensuality and equality among the bishops and ministers. "Whereas it is said, for the preservation of unity one must be over all, St. Cyprian sheweth that the unity of the church is conserved not by having one bishop over all, but by the agreement of the bishops with one another. For so he writeth, that 'the church is knit and coupled together as it were with the glue of the bishops consenting one with another.'"[3] From the point of view of the logic of order involved, it is easy to understand Cartwright's dismissal of Whitgift's assertion that there must be an archbishop to settle contentions and disputes among the bishops, and thereby restore order. It is fundamental to the Calvinist scheme that the mutual decision of obedient authorities dedicated to the word of God and properly 'elected' by the consent of the church *will* equal true order. Indeed, *only in voluntary consent can true order be achieved. Consent is the glue of the Body.*

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[1] McGinn, *AC*, 326, italics supplied.
[2] *Ibid.*, 328.
[3] *WW*, II, 211. Quoting Cyprian further, he says: "We do not use any compulsion or violence over any, nor appoint no law to any; seeing that every one that is set over the church hath in the government the free disposition of his own will, whereof he shall give an account unto the Lord." (*WW*, II, 208) We emphasize the distinction he makes between government by law and compulsion and government by 'the free disposition of his own will.'

While it is true that Cartwright generally expresses his preoccupation with consensual or voluntary action in ecclesiological terms, he makes some remarks about liberty and economic action that are most important for our purposes. The remarks are found in a short but vigorous exchange with Whitgift over the question of observance of holy days.[1] Cartwright strongly resists the idea of having many different and arbitrary holy days that prevent the individual from performing a good day's work. He supports the words of the *First Admonition*, which lays it down as God's command that "Six days shalt thou labor." He even resists celebrating

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1. The exchange is found in *WW*, II, 569-592. To my knowledge, these significant observations *by* both Whitgift and Cartwright have received no scholarly attention. The main point at issue--whether the secular or ecclesiastical hierarchy can regulate voluntary activity--expresses in economic terms the usual ecclesiological conflict between Whitgift and Cartwright, or between the official Anglicans and the Puritans. As we mentioned in the preceding chapter, the removal of direct governmental-legal (or coercive) control from economic activity is at the heart both of the Calvinist logic of order and of the 'rise of capitalism.' The total blindness of the Georges to this basic issue is (by now!) fully to be expected. They inform us that there is "absolutely no tendency in this ("Puritan") literature which points to the liberalism of the modern world." (*Op.cit.*, 165) They also argue that there is *no* 'spirit of capitalism' *before* 1640! (Cf. our note on Nef's and Lipson's conclusions, ftnt. 1, 37-8.) However, even the more thoughtful Knappen urges that the relation of Puritanism to the rise of capitalism was 'negative rather than positive.' (422) For anyone reading Perkins, these views are extremely curious, but we wish to point out that the main outlines present in Calvin and elaborated in Perkins (see below), are also suggested in Cartwright. For further reference to economic liberty and holy days, see Cartwright's *Directory of Church Government*.

Easter on a special day, for "it tieth and (as it were) fettereth a meditation of the Easter to a few days, which should reach to all our age and time of our life..."[1] But if holy days are to be kept at all, they ought to be kept by custom, and *not* by the command of the church or the magistrate: "which thing if it had remained in that freedom, that it was done by custome, and not by commandment, *at the will of every one, and not by constraint*, it had been much better than it is now..."[2] He continues: "...it tendeth to no policy nor wealth of the people, or preservation of good order, that there should be so many days wherein men should cease from work, being a thing which breedeth idleness and consequently poverty, besides other disorders and vices, which always accompany idleness."[3] "Seeing that therefore that *the Lord hath left it to all men at liberty that they might labour, if they think good*, six days; I say, the church, nor no man, can take away this liberty from them, and drive them to a necessary rest of the body."[4]

For Cartwright, upholding the Calvinist system of thought, liberty in the church corresponds to liberty of economic behavior. Voluntary obedience to the calling of God inevitably expresses itself in economic terms,[5] because, just as with Calvin, the realms of economic and ecclesiological action are so profoundly interrelated.[6]

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[1] *WW*, II, 577.

[2] *WW*, II, 582, italics supplied.

[3] *WW*, II, 587.

[4] *WW*, II, 569, italics supplied.

[5] Against Whitgift's separation of worldly and 'spiritual' callings, Cartwright adopts a view that must have appeared very 'secular' to Whitgift: "All lawful callings came from God, and return to him again, that is, he is both author of them, and they ought to be referred to his glory." (*WW*, III, 437.)

[6] Whitgift's general attack on the Puritans (see below) applies equally to either realm. For example, he says: "...you seek freedom from all

Those essential components that go into making up the church's life form the present embodiment of the ultimate order of God. The church is, as Cartwright says, "the foundation of the world." Therefore, "it is meet that the commonwealth which is builded upon that foundation should be framed according to the church..."[1]

> It is true that we ought to be obedient unto the civil magistrate which governeth the church of God in that office which is committed unto him, and according to that calling. But it must be remembered that civil magistrates must govern according to the rules of God prescribed in his word, and that as they are nurses so they be servants unto the church, and as they rule in the church so they must remember to subject themselves unto the church, to submit their sceptres, to throw down their crowns, before the church, yea, as the prophet speaketh, to lick the dust of the feet of the church. Wherein I mean not that the church doth either wring the sceptres out of the princes' hands, or taketh their crowns from their heads, or that it requireth princes to lick the dust of her feet (as the pope under this pretence hath done), but I mean, as the prophet meaneth, that, whatsoever magnificance, or excellency, or pomp, is either in them, in their estates and commonwealths, which doth not agree with the simplicity and (in the judgment of the world) poor and contemptible estate of the church, that they will be content to lay down.
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> And here cometh to my mind that wherewith the world is now deceived, and wherewith M. Doctor (Whitgift) goeth about both to deceive himself and others too, in that he thinketh that the church must be framed according to the commonwealth, and the church-government

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laws of princes, and imagine that such perfection may be in men, that they shall not need to be governed by civil laws, but every man to be a law to himself." (WW, II, 19) This is an extremely perceptive comment, grasping rather accurately the logical conclusion of the Calvinist-Puritan system. However, the matter is much subtler than Whitgift understands. Cartwright does not advocate anarchy, as Whitgift argues, and he would be as horrified as the Archbishop at the thought of purposely helping to create disorder. What he does advocate is a 'new law' and a 'new order.' Whitgift, of course, evaluates and analyses Cartwright's position in terms of his own logic of order, which, by definition, rules out the possibility of what his opponent is heralding. It is our contention that the logological issue is at the bottom of the entire dispute.

[1] WW, III, 189.

> according to the civil government, which is as much as to say, as if a man should fashion his house according to his hangings, when indeed it is clean contrary, that, as the hangings made fit for the house, so the commonwealth must be made to agree with the church, and the government thereof with her government. For, as the house is before the hangings, and therefore the hangings which come after must be framed to the house which was before, so the church being before there was any commonwealth, and the commonwealth coming after must be fashioned and made suitable unto the church.[1]

If the church is the manifestation of the new consensual or voluntary order, the state is the manifestation of the old coercive order. As such, it is distinctly subservient to and, indeed, fulfilled in the church. The state must become 'fashioned' according to the Body of Christ, until, ultimately (or eschatologically) it ceases to be needed as a constraining agent. It is, thus, decidedly subordinate to the church: "every nation and kingdom which shall not serve the church shall be destroyed."[2]

Of course, the state has its own special mandate from God. It plays an extremely important role in "holding owte sinne," and it is due great obedience and honor from the Christian. It maintains order to the "glory of God."[3] In fact, argues Cartwright, his doctrine is a "friend unto princes and magistrates."[1] He desires, simply, that the commonwealth truly fulfill its mandate by submitting itself to the purposes of the genuine order of God, for "the full and whole placing of our Saviour Christ in his throne is the perpetual stay and stayed perpetuity of all princes in their seats."[2]

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[1] WW, III, 189.

[2] WW, I, 25. We would call attention here to what we described as the subjunctive or conditional character of government in Calvin's view. By extension, the same terms apply to Cartwright's position. The state must be brought into line with the church that it might be fulfilled. There is in the Calvinist-Puritan system very little that could be called 'indicative' about the Lordship of Christ over politics. The only hope is that the church will become the center of things and thereby orient government toward its proper end. (It is in the church and not in the world where Christ exercises his authority.) This is our fundamental reason for arguing that the Puritans regarded themselves as the "Elite of the New Order." (See below.)

[3] WW, I, 20; cf. WW, III, 295: Cartwright claims (like other Presbyterians) to be a loyal subject of the Queen's--"her authority be the greatest in the earth..." But, he continues in a vein that is strikingly like the words of Grindal to the Queen (see below 185), "it is not infinite, but it is limited by the word of God..."

That which subordinates the state to the church--namely, the use of the sword--is also what differentiates them.[3] At all costs, the functions of church and state must be kept distinct from each other. The church must not use any form of coercion or corporeal punishment, nor must it in any way assume the form of the state.

> And whereas in the policy of M. Doctor it seemeth a furtherance to the gospel to join these together, which

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[1] WW, I, 19-20. It must certainly be said that, although Cartwright and other Presbyterians, along with Calvin, hold that they desire no disturbance to the state, but only its secure continuation, Whitgift rightly points out what we could call Puritan double-talk on the subject. (See, for example, WW, I, 376.) On the one hand, like Calvin before him, Cartwright would leave the state untouched and simply reform the church--"they always require to be considered separately," as Calvin said. Yet, on the other hand, at the heart of the system is the proclamation of a totally new order in which the state's whole position is changed. They cannot have it both ways. (Cartwright slips so far as to say openly that "the commonwealth must be made to agree with the church, and the government thereof with her government," see 136) We would submit that the basic ambivalence here is due to an exclusive preoccupation with the dynamics of the church and a disregard for the dynamics of political life. (IV, 20 of Calvin's Institutes is, when all is said and done, little more than an afterthought.) Calvin and Cartwright held essentially a static view of political life which, it can be suggested, was as little consistent with the events of the time, as it was with the logic of their position. Whether they, or, for that matter, Whitgift or Hooker liked it or not, forces for radical change were unleashed during the 16th and 17th centuries which were already breaking the patterns of what they all regarded as the 'old order.' Revolutions seldom affect only one isolated sphere of social existence. Something drastically new was emerging that affected all of life. The Puritans were deeply related to it--they knew not how deeply.

[2] WW, I, 25. Cf. WW, III, 295.

[3] McGinn, AC, 346.

> was also the policy of the idolaters...in the wisdom of God it hath seemed far otherwise; which I doubt not did therefore separate the ministry from this pomp, which is commendable in the civil magistrate, lest the efficacy and power of the simplicity of the word of God, and of the ministry, should be obscured, whilst men would attribute the conversion of souls unto the gospel (due unto the word and to the Spirit of God) to these glorious shews; and lest, whilst the minister have the word in one hand and the sword in the other, men should not be able to judge so well in their consciences of the mighty operation of the word of God in them. For they might doubt with themselves whether the fear and outward shew of the minister carried some stroke with them in believing the word.[1]

Ministers must not "meddle in civil affairs," nor hold civil office, as was the custom in the Anglican communion. In so doing, they not only take the sword into their hands, but they also lend the legitimacy of the word of God to the provisional structure (including degrees of rank and status) of the old order.[2] Furthermore, there ought not to be church courts under any circumstances. To demand for the church legal, coercive jurisdiction over such things as marriage, divorce, wills and testaments, and to claim for the church special courts with peculiar means of legal administration, such as *ex officio mero*,[3] is again to confuse the old order with the new.

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1. *WW*, III, 436.
2. McGinn, *AC*, 349.
3. The process called *ex officio mero* (the capacity of the judge on his own responsibility *to move cause* against a defendent) was, as is well known, one of the main weapons used by the Chancery Courts to root out Puritans. The defendent was required to swear to charges before they were cited, and he could obtain legal advice only after he so swore. Consequently, he might often have to swear, and under further interrogation, to testify against himself. If the charges were contested, then witnesses were produced, and almost any kind of information was accepted. The prosecution enjoyed, obviously, a distinct advantage. The whole process was strongly resisted by the Puritans, for understandable reasons. (See H.C. Porter, *Reformation and Reaction*, 158-160.)

   However, the common lawyers also resisted this practice which rested on civil and canon law procedure. R.A. Marchant in *Puritans and the Church Courts in the Diocese of York, 1560-1642* (London, 1960), 5, remarks: "One of the distinct advantages of canon and civil law pro-

It is to claim for the church what rightfully belongs to the magistrate and the civil courts.[1]

Cartwright is very clear regarding the way in which the state must employ its coercive power in the service of the church. Atheists and disobedient people, he says, are

> ...of and in the commonwealth, which neither *may nor can be in or of the church*; therefore the church *having nothing to do with such,* the magistrate ought to see that they join to hear the sermons in the place where they are made, whether it be in those parishes where there is a church, and so preaching, or where else he shall think best, and cause them to be examined how they profit, and if they profit not, to punish them; and, as their contempt groweth, so to increase the punishment, until such times as they declare manifest tokens of unrepentantness; and then, as rotten members that do not only no good nor service in the body, but also corrupt and infect others, cut them off: and, if they do profit in hearing, then to be joined unto that church which is the next place of their dwelling.[2]

Since those who are obedient members of the church are the *true citizens* of the new order, they constitute the new elite in relation to whom the whole society must be organized. They it is who set the tone and direction for social life. In fact, a citizen's very usefulness to society is to be judged, finally, on the basis of his obedience to the church. It is quite clear, on the logic of Cartwright's position, that no member can take his proper place in society, without first taking his proper place in the new community. Accordingly, the state must be marshalled in the service of driving citizens toward true obedience, that is, toward the

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cedure was that only very rarely did a judge give any reason for his sentence. The tradition of precedents built up in the common law courts, by the publication of reasoned judgments, was one of their greatest strengths, and gave them much influence. A similar practice, had it existed before the eighteenth century in civil law procedure, would undoubtedly have done much to enhance the prestige of those courts."

[1] *WW*, III, 265, 438.

[2] *WW*, I, 386, italics supplied.

church. Those citizens who incorrigibly refuse to be so driven must be lopped off by the state "as rotten members" that do "no good nor service in the body." Quite literally, they can be of no earthly use. They are as injurious to the commonwealth as they are to the church, for their disobedience can produce nothing but disorder.

Here we see again the basis for the inseparable unity between ecclesiological and economic action in this system of thought. Only in direct, voluntary response to God's command does one fulfill his function or service (calling) in God's true order, and only when one fulfills his function in God's order, is he obedient to God's command.[1] Obedience and fulfillment of function take place in the church insofar as it is the proleptic embodiment of the new society that is breaking in. Therefore, membership in the church must contribute to true social order, while wilfullness against the church can only mean drastic social disintegration. In that sense, the genuine member of the Body of Christ is the measure of true citizenship for the commonwealth.

In its separate and subordinate position to the new order of God, the state may be said to operate--in Professor Friedrich's ingenious phrase--by "reason of church." Insofar as it defends and extends the church and the word of God, as Cartwright understands it, the state most adequately performs its own task. "The only way," he writes, "of purging

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1. On the logic of the system, it would be as impossible for a person to fulfill his 'lawful calling' in economic life without heartfelt obedience as it would for him to have heartfelt obedience without fulfilling his 'lawful calling.' For the Calvinist-Puritan system, true obedience equals true order in the total sense. Cartwright did not spend much time working at the economic implications of the logic, though as we have seen, he did not altogether neglect them. These dimensions were much more spelled out by Perkins (see below). But the fact that Cartwright was preoccupied with ecclesiological aspects, does not mean that the economic implications are not squarely in the logic of his position.

the Commonwealth of these pestilences (murders, thefts, etc.) is to bend the force of sharp and severe punishments, especially against idolaters, blasphemers, contemers of true religion and of the service of God."[1] Cartwright rather frequently calls for the death penalty against such people, and at times his words reach a pitch of vindictive brutality.[2] So much so that McGinn--not without justification--labels Cartwright's writings as an "outline for an Elizabethan concentration camp."[3] He finds in the leading Puritan's words the rankest expression of totalitarianism.[4]

But if totalitarian regimentation was advocated in the name of the new elite, the fundamental differentiation between state and church, the old order and the new, was maintained. The all too common view that English Puritans "wished to do in England what they later did in New

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[1] SR, 118 (italics supplied).

[2] SR, 69-70. Pearson, in Church and State, 110, attempts a defense of Cartwright, arguing that his position must be understood in the setting of the times, times in which intolerance was not uncommon. While that is partly true (the argument is a familiar one used by nearly all apologists on behalf of favorite figures who indulged in intolerance), it is not the last word, and when it is so taken it confuses rather than clarifies the dynamics of thought at work. Hence, McGinn's reluctance to accept Pearson's rather half-hearted justification is, I think, quite in order. (McGinn, AC, 133.) There are important reasons in the Calvinist-Puritan system for the unrelenting intensity with which it sought to sponsor the transformation of the widest possible number of consciences. Thereon lay the hope of order. And while 'Elizabethan tolerance' is, it seems to me, often smugly exaggerated (for example, Rowse tells us that the Church of England "was gentler and kindlier" than the Catholics or the Puritans--"like the English people themselves"!), there is a vast difference between the essentially defensive intolerance of Whitgift, Bancroft and Laud, and the decidedly offensive intentions of the Elizabethan Puritans.

[3] McGinn, AC, 132.

[4] There is here exactly the same drive toward 'totalitarianism' that existed in Calvin's position: that the widest number of people will in the deepest and most active way God's true order, and become obedient to it. Literally, the direction is toward that time when God's sovereign will will be "all in all."

England, that is, destroy the ancient law, decisions in equity, and the ancient monarchical constitution" and that they "wished to set up the Mosaic law as the only legal code for the land" is fully mistaken.[1] Such a suggestion simply misunderstands the dimensions of thought at work here. ~~Calvin~~ Cartwright explicitly denies Whitgift's assertion that he and the Puritans are seeking to abrogate all the existing laws of the land by substituting Mosaic laws for them.

> As for the casting away / of the studie / and large volumes of the lawe / which he imagineth to followe of this assertion: he decieveth hym selfe...If he aske our lawiers / upon what groundes the greatest part of their houghe volumes (as he calleth them) stand, they will answer him / they partly stand uppon the plaine wordes off the lawe off Moses / and partly of reason uncorrupt / which is the equitie off the lawe urged off us. And therfore althoughe our lawes / be some time in forme diverse / from the lawes off Moses: yet they will never graunt him...that our healthsome lawes, be contrarie to Moses lawes. For both being Good / one of them can not be contrarie to the other.[2]

Not only is there no insinuation that the whole body of English law ought to be thrown out to make room for Mosaic law, there is, in fact, the assertion that, in general, English law already exists in harmony with Mosaic law, even though it is articulated differently. Nor will Cartwright accept Whitgift's accusation regarding the replacement of lawyers with clergymen.

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[1] John S. Marshall, "Richard Hooker and the Origins of American Constitutionalism," Origins of the Natural Law Tradition (Dallas, 1954), 48. This widespread view--with respect to New England at least--has been once and for all demolished by G.L. Haskins' most interesting recent book, Law and Authority in Early Massachusetts (New York, 1960). Haskins shows the impact of common law tradition on Massachusetts Bay, even though certain adjustments were made. (See esp. X, "After English Ways," 163ff.) "The Bible in Massachusetts was an indispensable touchstone, but not the cornerstone, of Puritan legal thinking." (162) The same regard for the common law tradition most certainly existed among the English Puritans.

[2] SR, 103-4; cf. WW, I, 273.

> Where he saith that we of the clergy, should be the best judges by this means, it is to open injurie / to charge us with that / which we openly renounce / and condemn in him: which is / that in medling in civil affaries / they put their sickle in an other mans harvest.[1]

"It is not," he continues, "as the Answer (from Whitgift) surmiseth untruly that the magistrate is simply bound unto the judicial lawes off Moses: but that he is bound to the equitie / which I also called the substance / and marrowe off them."[2] Cartwright makes ample room for the discretion of the political and legal authorities in the application and interpretation of the law of God: "yt followeth / that even in making

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1. The passage continues not altogether clearly: "Notwithstanding if in establishing of lawes / for the Godly / and peaceable governement of the common welth / there may be no assistance of the ministerie / whereby the lawes should be the better compassed / to the equitie prescribed in the word of God / and to take heede that nothing be doon against it: there is no just cawse / to uphold the Bishops presence in the Parlament howse." (SR, 104.)
2. SR, 95. For Cartwright the term "equitie" is equated with the "morall lawe." Although the Old Testament ceremonial laws and many of the judicial laws were abrogated with the coming of Christ, the moral law was not. (SR, 96) It is the moral law that is related to "our reconciliation with the Lord" and "our good agreement with men," or to the ultimate end of God's order fulfilled in Christ. It is that towards which all good law and order is now directed, and that is why the law of the land ought to be framed with reference to it (see below, ftnt. 1, 144). This notion, a replica of Calvin's doctrine of natural law, means two basic things in our analysis: 1) God's command is related to and bound up with the driving forces of the law of the land. Secular law is brought under the service of God. 2) God's command can never be reduced to nor fulfilled by the administration of the law of the land. It remains, by definition, an indefinite, indeterminable "equitie," "substance" or "marrowe" that resides in the indeterminable sovereignty of God's will. In complete agreement with the Calvinist themes running throughout this study, here is the foundation for the two superficially contradictory impulses in Calvinist-Puritanism: 1) the intensification of the law by which men are thrust towards active, heartfelt allegiance to God, and 2) the devaluation of the law as the means of true obedience because of its reliance upon coercion. Both of these aspects indicate the reasons why there was no specific suggestion for essential or structural reform of English law. On the one hand, English law was already related to the moral law, and, on the other hand, no legal system could in itself reproduce true order. Only God can do that.

politike lawes / for the common wealth / Christian Magistrates owght to propound unto themselves those lawes (of Moses) / and in the light of their equitie / by a just proportion off circumstances, off person / place / etc. frame them."[1] Of course, the "core" of English law must agree with the law of God,[2] but the meaning of "core" remains quite vague and subject to the determination of the God-ordained secular authorities. On the face of it, Cartwright's formulation is not much different from what many non-Puritan jurists were saying.[3]

The real point at issue was Cartwright's urgent request that the force of law be intensified in order to give the inward consciences and heartfelt commitments of men no rest until they rested in voluntary obedience to God's new order.[4] The "substance and marrowe" of the law of God was precisely that God is the sovereign who must be obeyed directly, and before whom there may be absolutely no other authorities. That is why, for Cartwright, crimes against the first table of the Decalogue must be enforced most severely.[5] Secular law serves the purposes of God, it 'agrees' with the command of God, when it drives man toward that community whose mark of membership is the consent of the free conscience.

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[1] SR, 97.

[2] SR, 104.

[3] Eusden, op.cit., 124: For example, Sir Edward Coke, hardly a Puritan, favorably quoted a 15th-century chief justice: "To those lawes which the holy church hath out of scripture, we ought to yield credit; for that...is the common law, upon which all lawes are founded." (From II Institutes, 625) Eusden continues: "The Bible supported, in the mind of the lawyers, the authority of ancient common law rules and parliamentary enactments and thus helped to effect the ultimate authority of fundamental law." Cf. Haskins, op.cit., 144.

[4] Heresy laws and laws against adultery had long since been part of the common law. Cartwright and the Puritans would simply intensify and expand their enforcement. Haskins, op.cit., 144ff.

[5] See Pearson, Church and State, 108-110.

The profound threat that Cartwright and the Puritans represented for late 16th-century English society was not that they wished to substitute the law of Moses, lock, stock and barrel, for the common law. To be sure, they would sharpen specific aspects of the law, but their fundamental objective called into question the very nature of the state and the law as agencies capable of determining and producing ultimate order. As Whitgift perceptively remarked: "this doctrine of yours...tendeth to the overthrowing of states of commonwealths..."[1] They attempted so to harness the power of the old order to the service of the new, that when it had finally accomplished its task--namely, of pressing men to stand voluntarily before God and alongside one another--it would, at the same time, have lost its reason for being, its raison d'etat.[2] The church, after all, is the foundation of the world, and its character, by definition, rules out coercion. As with Calvin, on Cartwright's logic of order, coercion is its own undoing.

So long as the world exists, rebellion and disobedience naturally need restraint on the terms of the old order. But the days of the state and the law as agents of force are clearly numbered. The whole thrust of what we call the Calvinist logic of order, consistently extended by Thomas Cartwright, was a radically new structure of relationships in which the free individual conscience coincides with harmonious social integration. A decisive sector of social life becomes emancipated from political-legal control--it develops its own autonomy, its own inner order.

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[1] WW, I, 278.

[2] On the logic of the system, there is a 'withering away' of the state and, consequently, a devaluation of the state (and of the law) as the source or expression of ultimate earthly order. The state cannot out of itself set the fundamental tone for social life, even though it retains its own distinctive mandate from God. Nor is there, in this logic, a static subordinationism, in which state and church are relegated to an eternal, 'natural' hierarchical relationship; nor a notion of the omnicompetence of given political-legal structures in all worldly affairs, as was the case with official 16th-century Anglicanism.

Cartwright elaborated this system of thought almost exclusively in ecclesiological terms. The wider social implications remained to be articulated by the Cambridge divine, William Perkins.

II.

William Perkins (1558-1602)

If Cartwright was the explicit leader of Elizabethan Puritanism who provided theological and biblical ammunition for the front-line ecclesiological concerns of the movement, William Perkins was the dominant systematic theologian, who expounded and elaborated the Puritan system from well behind the lines. At one time, these two central figures were associated in an underground classis in Cambridge, and early in his career, Perkins defended certain Puritan liturgical ideas. But in 1587 he recanted his opposition to kneeling and in 1590, when the Puritan persecutions were heightened, he more or less dissociated himself from those particulars of church reform so passionately emphasized by Cartwright. Wright accurately calls him a moderate Puritan with a rather uncontroversial nature.[1] In several places, Perkins prudently defends the Church of England, arguing that it is still within the pale of the true church.[2]

Perkins' generally soft view in these matters has led various writers

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1. L.B. Wright, op.cit., 171.
2. See I, 307, II, 161, III, 240-1, in Perkins' Works, in three volumes: I, 1616; II, 1617; III, 1609. The pages in III are renumbered after 265. Those subsequent pages I have marked with an asterisk.

to argue that he was, at bottom, a good Anglican and possibly the leading defender of Anglicanism against the Roman Catholics. The Georges even produce the idea that Perkins and Laud were in "complete agreement" on affairs of church and state![1] Such conclusions not only fly in the face of what Perkins himself says about church and state, but they in no way reflect awareness of the components and complexities either of Puritanism or official Anglicanism. As we saw above, Calvin and Beza themselves held ambivalent views toward the Church of England, and we have argued that both soft and hard views could find support in their vacillating attitudes. In any case, there is no value in lighting on a few random passages in a man's thought and using them as a basis for comparison. Perkins was a professional theologian whose ideas manifest a sophisticated and coherent point of view profoundly at odds with the official position of the Church of England, whether he cared to indicate that fact openly or not.

Perkins is especially concerned with ethical action and social affairs, so that he focuses the Calvinist tradition in ways that reflect and speak to the spirit of the times. Yet, he is by no means simply a tractarian, and his social analyses and ethical pronouncements cannot be understood apart from his theology. Perkins forcefully and consistently applies the central theological components of the Calvinist system to social activity. The inbreaking new order of God has for him the greatest practical relevance.

He lived only forty-four years, but managed, during that time, to achieve immense influence and popularity as a lecturer at Cambridge and as a preacher at St. Andrews'. "In a word," says Fuller,[1] "the Scholar could heare no learneder, the Townsmen plainer Sermons." He numbered many leading Puritans among his students and followers: Preston, Sibbes, Ames, Cotton, Gouge, Thomas Goodwin, and he was very widely read among the New England colonists. "No books, it is fair to say, were more often to be found upon the shelves of succeeding generations of preachers, and the name of no preacher recurs more often in later Puritan literature."[2]

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[1] Georges, op.cit., 188.

For Perkins, like Calvin and Cartwright, God's will is "his essence of Godhead indeed."[3] "God must first will a thing before it can be just. The will of God doth not depend upon the quality and nature of a thing, but the qualities of things in order of causes follow the will of God. For everything is as God wills it."[4] Without God's active determination, there are no right relations among men, no harmony; in short, there is no genuine order. The 'just' order of the world depends upon God's preceding word, which is his order or command. "The world was ordained by the Word of God."[5]

> God framed the Ages, that is, all creatures, visible and invisible, in a most excellent, perfect, and absolute order. As in campe every man keeps his ranke and order, and no man goeth out of his standing appointed him: So every creature hath his due place, and his proper use assigned him of God: so that the workmanship of the world in every creature, and in every respect was absolute: and thus ordained is as much as perfectly made. And the whole world was as the perfect body of a man, where every member, bone, joynt, veine, and sinew, is in his proper place,

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1. Thomas Fuller, The Holy State, Bk. II, Chapt. 10.
2. Haller, op.cit., 65.
3. I, 722.
4. I, 288. Cf. I, 98, I, 724. At III, 23* Perkins underlines God's total sovereignty: "God is not tied to the order of Nature." This emphasis should be firmly born in mind when we come to compare the thought of Richard Hooker.
5. III, 10.

and no thing out of square.[1]

Also, as with Calvin and Cartwright, the essential ingredient in God's true order is the voluntary, conscience-felt obedience of man. Adam, in the state of innocence, possessed the possibility of such obedience, and therefore embodied, temporarily at least, "the integritie of man's nature"; in him was wisdom and justice "which is a conformitie of the will, affections, and powers of the body to doe the will of God."[2] Man's inner integrity, as well as his outer or social integrity, is deeply bound up with the freedom in which he wills to be obedient to God's word. Just as God freely creates order by an assertion of his sovereign will, so man participates in the creation of true order and fulfills it through the uncoerced agreement of his will with God's: "...in every good act, God's grace, and mans will, concurre: Gods grace as the principall cause; mans will renewed, as the instrument of God. And therefore in all good things, industrie and labour, (and) invocation on our parts is required."[3] "When a creature is in that estate, that it willingly serves God, and cannot but serve God, then is our perfect libertie."[4]

But Adam rejected God; he sinned. Consequently, he was overcome by the "corruption, or rather the deprivation of the first integritie." He fell into a state of disorder, characterized by "the confusion or disturbance of all the powers and actions of the creature."[5] Disobedience infects the whole life of man so that even "...the best inclinations and motions of the mind of a naturall man, are not onely enemies, but even enmities to God." "And though he which is captive to sinne can do nothing but sin, yet may hee in sinning use his liberty: and in divers kinds of evils intended, shew the freedome of his will."[1] Man freely rejects God and becomes trapped in his own wilful recalcitrance. The bitter fruit of human dereliction is radical social disintegration. There is disorder, dissension and strife in the world, says Perkins, because

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[1] Loc.cit..
[2] I, 17.
[3] I, 738.
[4] I, 722.
[5] I, 18.

> ...the state of all creatures is changed, for that wherein they were created, by the fall of our first parents. God made no disorder...therefore it was in a most perfect order: For orderly comlinesse is a part of the goodnesse of a thing: but disorder is the effect of sin: it entered with sinne, and it is both a companion and a reward of sinne. (N.B.!) Had we continued in our innocence all creatures had continued in their excellent order: but when we had broken the perfect order, that God had appointed us: immediately all creatures broke that order wherein they were afore both towards us, and amongst another. Whil'st we obeyed God, all creatures obeyed us: but when we shooke off the yoke of obedience unto God, and rebelled against him, then they became disobedient unto us...
>
> ...So God created man rich in all blessings, put him into the palace of the world: garnished this house of the world with exceeding beauty: his meat, his apparell, his recreation, his house were all excellent and glorious; he made all other creatures, amongst which there was nothing but concord, love, agreement, uniformity, comeliness, and good order: now man by sin fell, and by his fall, not onely spent all his riches (that is, defaced the glorie of his owne estate:) but also set this house (that is the world) on fire: that is, defaced the beauty of heaven and earth: brought confusion, corruption, vanitie, deformity, imperfection, and monstrous disorder on all creatures; set all the world together by the eares, and one creature at variance and deadly hate with another: so that one creature doth fight, teare, wound, destroy, and eat up another. O cursed and damnable sinne of man, that hath so shamefully disordered that heavenly order, wherein God created all things in the beginning![2]

There remain, to be sure, vestiges of God's image "in certain notions

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1. I, 730.
2. III, 10-13*. One could hardly find a more beautiful example of the interrelation between 'order' and 'obedience.'

concerning good and evill..." which abide in man's conscience. But they serve simply "to bereave man of all excuse before Gods judgement seate" by continually disturbing and condemning man on account of his disobedience.[1]

Man thus "dead in sin" can be restored to order only through an overreigning act by God himself. That act, according to Perkins, is Jesus Christ. The creation and perfection of true order is the work of God, and his 'call' or law points man to a heartfelt, voluntary acknowledgement of that fact. In such acknowledgement is obedience, and in such obedience is the fulfillment of order. It is Christ alone who meets these requirements. He "...stands in our place, roome, and stead; and before God represents the person of all the elect: and in this respect is he subject to the law, *not by nature, but by voluntarie abasement and condition of will.*"[2] All the sins of the elect are imputed to him, so that his "obedience is a fulfilling of the law for us, and his whole righteousness is ours to make us stand righteous before God."[3] In Christ those men who were elected or predestined by God to obedience are 'chosen,'[4] and the possibility of realizing their election begins: theologically put, Christ's justification makes sanctification possible.[5]

The election of God, made manifest in Christ, is "an effectual calling, whereby a sinner beeing severed from the world, is entertained into God's family."[6] He who is chosen becomes a member of the new order which is Christ's Body: "...the whole person of every faithfull man, is verily conjoyned with the whole person of our Saviour Christ..."[1] "Christ, because he is the head of the faithful, is to bee considered as a publike man sustaining the person of all the elect."[2] It is, in other words, in the church that the new order of God is inaugurated; there men participate in Christ's free-willing conformity to God's law.

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[1] I, 20.
[2] II, 237.
[3] I, 309.
[4] I, 24.
[5] I, 81-85.
[6] I, 76.

> As a king by his lawes brings his people in order, and keeps them in subjection, so Christ by his word, and the preaching of it, as it were by a mightie arme, drawes his elect into his kingdome, and fashions them to all holy obedience...In this kingdome all men live not, but only those that are subject to Christ, obedient to the lawes of his kingdome, and ruled by his authority and are continually taught in his word by his spirit. But those that refuse to live according to the lawes of this kingdom, and choose to live at their owne libertie, are in the kingdome of darknesse, that is, sinne and Satan.[3]

The elect are restored to true order. Final obedience to the "law of Christ," that is, to the command manifested in Christ's life, death and resurrection, is that structure of human relationships integrated and harmonized according to the needs of the community: "for the common good is to bee preferred before any one man private good."[4]

> ...those that are strong must support the infirmities of the weake, that so the whole building beeing compact and knit together, may grow up to a holy temple in the Lord...For each member has need of the others and must adjust and yield to the infirmities and weaknesses of the others...[5]

> As a candle spendeth it selfe to give light to others:

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[1] I, 78.
[2] I, 78. In another connection, Perkins describes Christ as a "publike person" who represents the elect as does a Burgess in Parliament! (II, 214-15) This political metaphor is particularly interesting in the light of the strong Parliamentary activity of the Puritans during the reign of Elizabeth.
[3] I, 336.
[4] II, 359.
[5] II, 360.

> so must Gods people spend those gifts which God hath given them for the benefit of their brethren. A Christian man howsoever he be the freest man upon earth, yet he is servant to all men, especially to the church of God, to do service unto the members of it by love for good of all. And this good is procured, when we convey the graces of God bestowed on us to our brethren.[1]

It is in Christ and in him alone that this ultimate social structure can be realized, for it alone stands directly under the command of the Author of Order. As Christ directly opposes Satan (power of disorder), so his Body--the church--stands over against Satan's old order of sin and bondage, representing God's providential design. To be elected by God is to find and actively to fulfill one's place in the new order. For Perkins, as for Calvin and Cartwright, predestination is inseparable from the church: "the Church is a peculiar company of men predestined to life everlasting, and made one in Christ."[2] Logologically considered, God's sovereign election determines true order; therefore, those elected by God are elected in relation to each other. As we have seen throughout our analysis so far, predestination in the Calvinist-Puritan logic of order is in no sense atomistic or 'solitary' (to use Tawney's description), but decidedly organic.[3] The church as the body of believers is as crucial to God's scheme as his act of predestination itself. One without the other is quite illogical, as Perkins makes clear in a significant rejection of Arminianism:

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[1] I, 309.

[2] I, 277.

[3] At the risk of beating (what by this time should have been) a dead horse, we emphasize something already emerging from our study: that 'individualism' and social order are by no means necessarily antithetical terms, as, for example, the Georges (along with Tawney and others) argue. In their discussion of Perkins, op.cit., 129, they claim there is no individualism in Perkins because, as they see it, he stresses concern for the community. H.M. Robertson says the same thing with regard to Calvinism in general. The point of Perkins' logic is, of course, that when one individually obeys God's order (command), he voluntarily takes his proper place in God's order (community). His election is fulfilled when he himself elects to act harmoniously with respect to the 'greatest' and the 'meanest.' This kind of autonomous action is made possible precisely by differentiating

> ...it puls downe the pale of the Church, and laies it waste as every common field: it breeds carelessness in the use of means of grace, the word and Sacraments; when as men shall be perswaded, that grace shall be offered to every one effectually, whether hee be of the Church or not, at one time or other; whersoever or howsoever he live: as in the like case, if men should be tolde that whether they live in the market towne or no, there shall be sufficient provision brought them, if they will but receive it and accept of it, who would then come to the market?[1]

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the church from the state, or from coercive control. The church in this scheme 'institutionalizes individualism'--to borrow a term from Durkheim--it provides a context for behavior that takes place by virtue of individual decision, and not by means of the sword. To say it another way, the church becomes a sphere of autonomous order.

We have begun to see, and will see further, how this emphasis upon voluntary or individual behavior reaches, logically, over into the economic sphere, justifying also its emancipation from direct 'state control.' This key aspect of institutional differentiation is decidedly what is lacking, for example, in Machiavelli's ideas, even though Robertson, George and Strauss, among others, tell us that he it was who focused the great Renaissance contribution to the 'rise of economic individualism.' (In this connection, see our earlier discussion of the undifferentiated character of Stoic and Renaissance thought, and also our reference to Nef's analysis of the Renaissance 'economy of beauty.')

Robertson cites two passages in The Prince which are supposed to demonstrate Machiavelli's emphasis upon the "economic man." The first one, in XVII is totally inconclusive, but the other one, in XXII, illustrates our point decisively: The Prince "should encourage his citizens to go about their (economic affairs) in tranquility...", he "...should reward such citizens and any others who may in any way enrich his state or city." He should occasionally mingle with these citizens, though he should always preserve "the majesty of his dignity, for this should never be allowed to suffer in any way." This breathes, of course, paternalism and state controlled economic life akin, if anything, to the kind of state mercantilism found in Tudor England. Especially Elizabethan mercantilism sought in every way possible to extend its control. (See, for example, J.B. Black, Reign of Elizabeth (Oxford, 1952), 220f.) She sought at all costs to preserve and enhance 'the majesty of her dignity' through her monopolistic economic policy. Political supremacy over economic action hardly fosters centers of autonomous or independent activity.

[1] I, 295.

The heart of the logic of order before us is that God's decision demands a human decision with respect to social action, a decision between the old order and the new, between the world and the church. In good Calvinistic tradition, Perkins argues that there is no salvation outside of the church militant, "and such as remaine forever out of the same perish eternally."[1] "And the reason hereof is plaine: for without Christ there is no salvation: but out of the militant Church there is no Christ, nor faith in Christ: and therefore no salvation."[2] In other words, salvation is defined in terms of membership in the new community. It is for this reason, that "everyman must be admonished evermore to joyne himself to some particular Church, being a sound member of the Catholike Church."[3] In short, God's church on earth is "the most excellent of all societies."[4]

> The companies and societies of men in families, townes, and kingdomes, and in other common affaires of this life, be the ordinance of God, and good in their kinde; but yet the society of the Saints in the Church of God, doth farre surmount them all, and that in these respects; First, because in Gods Church salvation may bee obtained, but not in other societies as they are societies, though sundrie benefits arise from them, unlesse they bee either particular Churches, or members thereof. Secondly, the Church of God is the end of all other societies: and they are all ordained to preserve and cherish the Church, which is the society of the Saints. Thirdly, the Church beautifies all other societies: the principall dignitie of any towne, houshold, or kingdome is this, that they are either Churchs of God, or true members thereof.[5]

The church, as the institutionalization of the perfect blend of command and structure present in Christ, stands, naturally, under his direct authority: "...he neither hath nor can have any creature in heaven or on earth to bee fellow herein."[1] "Nay," Perkins continues, "Christ needes no vicar or deputy; for he is all-sufficient in himself and alwaies present with his Church..."[2] Even kings and princes, who, as we shall see, have great political authority, in the church "with all others owe homage unto Christ:[3] there he hath the Canonicall Scriptures to be his lawes, whereto every one must subject himselfe."[4]

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[1] I, 301.
[2] Loc.cit.
[3] Loc.cit.
[4] III, 245*.
[5] III, 245-6*.

Christ's authority over the church is implemented by means of the ministers, who are first and foremost preachers. The church is "gathered by the word preached."[5] Even ministers, however, are not deputies but "onely instruments"[6] of what Christ himself is doing in the church. They articulate that word of God which calls for direct and wholehearted response from the believer. By the logic of Perkins' system, man can

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1. I, 301.
2. Loc.cit.
3. On the basis of these and other passages, one can only surmise that certain scholars, as well as the Anglican authorities of the time, did not read Perkins very carefully or bother to think through the implications of what he was saying for the Anglican church. The whole foundation of Anglicanism, as we shall see more fully in III, rested on the postulate that the Queen was the "only supreme governor in this realm...as well in all spiritual and ecclesiastical things or causes as temporal." Perkins' position, fully consistent as it is with Calvin's and Cartwright's, strikes at the heart of that postulate. The church lives by a new authority and a new law. Further, Perkins sounds exactly like Cartwright on the possibility of deriving church government from scripture: "And deare Father of all mercie plant that government in thy Church every where which thou hast revealed in thy word, that the Saints may worshippe thee in those meanes, in order and comeliness, which thou hast appointed..." (I, 381) For profound reasons, such words were fully heretical to official Anglicanism. With respect to these arguments alone, it is preposterous to conclude Perkins was a great defender of Anglicanism. We, of course, are attempting to see these views in the wider theological, ecclesiological and social context of Perkins' thought.
4. III, 109. Christ alone must determine scripture, says Perkins, for neither the ministry nor the church has any authority of its own (loc. cit.). Our comments regarding Cartwright's view of scripture would also apply, in general, to Perkins. See ftnt 4, 124-25.
5. I, 304.
6. I, 609.

rely only upon the sovereign word of God shown forth in Christ for his authority; and only the ministers, whose very office of preaching refers to and embodies that sovereign word, can be taken as authoritative. It is, undoubtedly, because of the fact that God's word is sovereign and free and therefore irreducible to set patterns or generalizations that Perkins, like Cartwright, sharply rejects the Anglican practice of reading stereotyped homilies.[1]

At the same time, the authority of the preacher is inseparable from the electing consent of the church. Like Christ, the Christian is called first and foremost to a voluntary decision with respect to the order of God. In fact, the order is complete only when such a decision occurs. Therefore, logologically, the authority of the preacher concurs with the authority of the elect, who possess the decisive capacity to elect. Perkins states quite plainly that ministers must submit to examination and election, before entering their office. What he calls "allowance from men" for the "outward calling" is indispensable in determining the validity of God's calling. "And here it is to be remembered, that triall of gifts and free election, without partiality, should be in the designment of all, specially of publike callings." For so it was in the primitive church![2]

The capacity to elect or choose in matters of church government, naturally, entails an egalitarian principle within the new order. "The members thereof are all alike in heart and affection."[1] "Wee must come naked before him (God), and hee will have no respect to our birth, our riches, our learning. Therefore it is good for us to put on Christ, that in him we may be accepted."[2] Within the "regiment of the Gospell," says Perkins,

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[1] I, 348.

[2] I, 760. Of course, one does not find the emphasis upon consensuality in church government so insistent in Perkins as in Cartwright. We have already made reference to his hesitancy in discussing such things. But the idea is most certainly there, as we would expect it to be, indicating his defense of Anglican polity did not run very deep. I have found no attempts whatsoever to justify Anglican polity, or even to treat it. That is somewhat curious for a "staunch defender."

> ...there is neither father nor mother, neither master, mistres, maid nor servant, nor husband nor wife, nor Lord, nor Subject, nor inferiour, but Christ is all, and each to other is Christ himselfe, there is none better than other, but all alike good, al brethren, and Christ onely is Lord over all...[3]

This does not mean that all such divisions are eliminated here and now. The vision of the kingdom of God in which Christ shall "put downe all power, rule, and authoritie" thereby completely wiping away rank and status (including, significantly, the temporary distinction between pastor and people![4]), remains, in general, an eschatological vision. But, this new order is already breaking in,[5] overcoming the old order, giving new direction to the trend of history, while at the same time radically, if incompletely, embodying the outlines of God's ultimate order. It is in the church that men reap the first fruits of the inner and social integrity of their humanity. For, with Perkins, as with Calvin and Cartwright, to

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1. I, 309.
2. II, 194.
3. I, 394.
4. I, 667.
5. Hill in "William Perkins and the Poor," op.cit., 236-7, indicates the revolutionary agitation already at work within the Elizabethan Puritan congregations. "A Puritan petition of the fifteen-eighties asked that noblemen should be compelled to join with the nearest congregations, their houses 'being commonly not convenient...to have such Officers as ought to be in everie Church, and the want of mynisters yet being so great.'" Such a radical proposal for integration horrified Hooker (see below). The Puritan outlook was clear, continues Hill, "in the common depreciation of mere aristocracy of birth as contrasted with the aristocracy of the spirit."

be a man is fully and freely to decide for God as the sovereign of all things. That is the basis for all proper relationships. That is the basis for the only kind of status and division that really matters: the distinction between the old man and the new.

Accordingly, the church is the context or locus of man's genuinely voluntary, heartfelt action. It is, to use Travers' phrase, "the depository of the conscience."

> Now Christ being a King, must needs have a Kingdome, which is not of this world, standing in the might and policy of a man, as earthly kingdomes doe; but it is spirituall, directly concerning the hearts and consciences of men, where he ruleth by his lawes. And this is his privilege, which cannot be given any creature, man or Angell, to rule and raigne spiritually in the heart and conscience. This spirituall Kingdome of Christ is exercised, not by dint of sword, or force of armes, but by his holy word, through the work of the spirit.[1]

Like Calvin, Perkins claims that the conscience stands "in the middest between (God) and man, as an arbitratour to give sentence, and to pronounce either with man or against man unto God."[2] It is the center of man's existence insofar as it is the point of direct relationship between God and man, and insofar as it is the center for the reception and execution of God's order. "The proper end of conscience is, to determine of things done, (that is) a mans own actions..."[3] Conscience is, thus, virtually interchangeable with the will in Perkins' thought.[4]

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1. III, 219*.
2. I, 517.
3. Loc.cit.
4. This identification of conscience and will is already apparent in Calvin's thought. As the conscience is the center or locus for the reception of God's order, so it is the locus for the governing of man's action, and therefore equatable with the will. As Martin Schmidt points out in a stimulating article, "Biblicismus und natürliche Theologie in der Gewissenlehre des Englischen Puritanismus," I (on Perkins), Archiv

Just as God's sovereign will is decisive for achieving 'right order,' so, too, is man's conscience or will. And as God's will is not his unless it is free, or uncompelled by any higher authority, so there is no genuinely human will or conscience unless it freely acknowledges and acts upon the sovereign authority of God--"considering (a) will constrained is no will."[1] "We must be a lawe to ourselves: we must be voluntaries, without constraint, freely yielding subjection to the will of God..."[2]

> ...seeing Gods preventing and working grace turnes our wils, and makes them, of unwilling, most willing wils, all our obedience must be voluntarie, and come from such freenesse of will, as if there were no bond in the law of God, to force and compell us thereto. The people of God, that are turned and guided by the free spirit of God, must be a voluntarie people, and with all alacritie and cheerefulnesse, doe the duties that pertaine to them of a readie minde, even as if there were neither heaven nor hell, Judge or judgement after this life.[3]

Perkins described the Kingdom of God, toward which all things are moving,

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für Reformationsgeschichte, 42 (1951), 200-217, self-knowledge and self-determination are basically related in Perkins, because the activity of conscience lies in the sphere of law (of God's Command), or of actus. The unredeemed conscience condemns because of the disorder man wills under the bondage of sin. It turns God's law into judgment. Only the Gospel of Grace can break the power of man's self-confidence in his ability to order his own life. The redeemed conscience seeks to please God in discipline or action (211-212). Conscience and ethics are deeply interrelated.

It is this fact--this strong relation between conscience and will, or conscience and action--which Schmidt himself sees, that makes one of his conclusions so questionable. He claims that Perkins tended toward a "mystic spiritualism" by turning the "Anknüfungspunkt" that conscience is into an "Identitätspunkt zwischen Gott und dem Menschen." (217) However, for Perkins a redeemed conscience is a "repenting, striving, endeavoring" conscience, one, precisely, that is convinced of its inadequacy and unrighteousness before God (see below). That is to say, that conscience that knows the gulf between itself and God, the lack of identity, is saved or on the way to it. Schmidt's article leaves out of account the dynamics of Perkins' view of conscience.

[1] I, 559; cf. I, 721.

[2] II, 276; cf. II, 252.

[3] II, 217.

as a place "wherein Gods lawes are the onely lawes, and they shall be written in mens hearts: where each one is a sufficient governour of himselfe, and yet all subject to God; and their God unto them all in all."[1]

It is this heavy emphasis upon the consenting will or conscience as the crucial ingredient in true order that has led to some misunderstanding with respect to Perkins' viewpoint. For example, Mosse concludes that only the intention of the conscience, and not the ethical action itself is of consequence in Perkins' thought.[2] It is Mosse's understanding of Perkins that if one's intention concurs with God's will, whether or not one actually performs a good deed is unimportant. Of course, Perkins does give a great deal of attention to the disposition of the "inward affections"--to feelings of repentance, faith, conviction of sin and so on. Genuine conversion begins with a "mustard seed" of faith, it begins

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1. III, 79*.
2. George L. Mosse, *Holy Pretence. A Study in Christianity and Reason of State from William Perkins to John Winthrop* (Oxford, 1957). This leads Mosse to argue that Perkins had an ethical and political theory that promoted (ala Machiavelli) "reason of state" as a justification for political "policy." So long as intentions were right, any action can be justified (61-7). He further argues that Perkins' ruler is a *legibus solutus*--virtually uncontrolled and acting by "divine right." Professor Friedrich fully endorses Mosse's view. (*Constitutional* ~~70)~~ *Reason of State*, Providence, 1957, 70.)
   Mosse's case is intriguing, and may have a certain limited validity. But it will not bear the weight of the conclusions he draws from it. In the first place, Mosse's separation of intention and action in Perkins is too strong (see our counter-argument below). In the second place, as we have argued throughout this essay (mostly in footnotes), it is simply untenable to equate Machiavelli, who held, as Friedrich points out, that "the state is...the supreme and all-inclusive good and therefore no genuine good can be found outside the state," with the Calvinist-Puritan position. It could certainly be argued that this was, in general, Elizabeth's viewpoint, as well as James I's and Charles I's. But the way in which Calvinist-Puritanism restricts (and thereby depreciates) political life by summarily excluding its authority and control from a sector of social life can hardly be called 'Machiavellian,' especially when the excluded sector is the embodiment of ultimate social values. Religious and, inchoately at least, economic action are decisively withdrawn from the direct regulation of the state. That is not the basis for a thorough-going policy of reason of state, as Elizabeth found out.

with meditating, endeavoring, striving, asking, seeking, knocking.[1] "God accepts the endeavour of the whole man to obey, for perfect obedience itselfe."[2] "...The desire of reconciliation with God in Christ, is reconciliation itselfe:[3] the desire to beleeve, is faith indeed: the desire to repent, repentance itselfe."[4] It is, in fact, the presence of these intentions which provides the "infallible certainty of faith" to troubled consciences,[5] because salvation is defined with reference to the will or conscience that strives to serve God. That alone is good that stems from "a pure heart, good conscience, and faith unfained..."[6]

However, to argue that with this emphasis upon the regenerated conscience, Perkins is unconcerned with action is totally misleading and fails to grasp the dimensions of the logic of order at work here. Again and again, Perkins lays it down that the elect "must be plentifull in all good works..."[7] "Thus beleevers in Christ are great offendours, when reformed religion, and unreformed life are joyned together, as often they are."[8] He who is justified in Christ is also sanctified to the practice of holy works in his life, for justification and sanctification are inseparably related.[9] Conscience and obedience must be joined together

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1. I, 642.
2. I, 641; cf. I, 538.
3. Still, even within these statements there is an ambiguity in Perkins' words. He says further along on the same page: "A desire to be reconciled, is not reconciliation in nature (for the desire is one thing, and reconciliation another) but in Gods acceptation." (I, 639)
4. I, 639.
5. See ftnt. 1, 129. Perkins' interest in this "infallible certainty" is quite intense. It is, after all, what convinces one of his new humanity.
6. I, 560.
7. I, 292.
8. II, 212.
9. III, 57*.

in the Christian's life, for, says Perkins, repentance, humiliation and faith are nothing unless they lead to "new obedience unto God in our life and conversation."[1] The repentant person "must not live in the practice of any owtward sin."[2] Perkins is in no way unconcerned with action; his point is that *no good action is possible without the active determination of the free and voluntary conscience*. In fact, only when that is present will actions occur that produce right relations or good order. So long as man lives in the sinful world, conscience will not automatically coincide with perfect obedience[3]--that, as we have seen, will take place only in the Kingdom of God. But the redeemed man here and now strains in that direction, he struggles so to stand before God that "each one is a sufficient governour of himselfe, and yet all subject to God..." He endeavors, in a word, to will the command of God and thereby to fulfill the order of God.

The inseparable relation of intention (in conscience or will) and action[4] is portrayed sharply in Perkins' all-important treatment of the

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[1] II, 16; cf. III, 31*.

[2] II, 16; at III, 8* Perkins remarks: "Here it is plaine that men must not be content to keepe their faith close in their hearts, but they must exercise the fruits of it in the world: and then both these together will make a man truly commendable."

[3] This tension between striving and attainment Perkins shared fully with Calvin, though, in general, Perkins dwelt more extensively on the point than Calvin did. In the *Institutes* III, 19, 5, Calvin sounds exactly like Perkins: "But children, who are treated by their parents in a more liberal manner, hesitate not to present to them their imperfect, and in some respects faulty works, in confidence that their obedience and promptitude of mind will be accepted by them, though they have not performed all they wished. Such children ought we to be, feeling a certain confidence that our services, however small, rude, and imperfect, will be approved by our most indulgent Father."

[4] Very significantly, Perkins remarks: "...this is evidence of a good conscience, when a man shewes himselfe a Christian in his calling at home, and conversation (employment) among his brothers." (III, 149) We emphasize this over against Mosse's line of argument. The autonomous conscience exercises itself 'religiously' and 'secularly.'

'secular' calling of a Christian. With that, we come again to the now familiar connection between ecclesiological and economic action. In his Treatise of the Vocations, or Callings of Men, with the sorts and kinds of them, and the right use thereof, Perkins defines a vocation or calling as "a certaine kinde of life, ordained and imposed on man by God, for the common good."[1] God is the author of every "lawful calling" which is a particular office or function in the world allotted exclusively for the enrichment of the whole social order: "men should be (God's) instruments, for the good of one another."[2]

> For the Church and Commonwealth are as a mans body, wherein every member hath his severall offices, for the good of the whole body: and indeed everyman should have not onely a generall calling of a Christian, but a particular calling also, wherein he must imploy himselfe for the common good: it is against the Word of God and the light of Nature, that any man should live having nothing to do.[3]

According to Perkins, the calling of God has two aspects, a "general" and a "personal" one. With respect to the first, the Christian is called to membership in the church, in which he becomes a "living stone" entrusted with the "duties of edification." As such he brings "free-will offerings" of prayer, service and possessions in order to "procure the good of the whole mistical body of Christ."[4] One fulfills this calling by a daily renewal of repentance and faith and a fresh "indeavour to performe new obedience in respect of all (God's) commaundments."

"A personall calling is the execution of some particular office, arising from the distinction which God makes betweene man and man in every

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1. I, 750.
2. I, 757.
3. I, 91.
4. I, 752-754.

societie."[1] The election of a Christian is embodied in the specific secular task he is given to do, and God's true order is manifested in the integration and harmony of all the differentiated functions, or the "diversity of gifts" that the elect collectively possess. A personal calling is honest and lawful if it upholds and serves the three basic societies, the church, the commonwealth and the family. It is "fit" for an individual if he has the necessary talents and capacities, if he receives "allowance from men," and if it seems, from his point of view, "best for him." The Christian must be discouraged from changing occupations,[2] though a basis for change does exist when private necessity and the common good so dictate.[3] Particular accoutrements vary with each personal calling which means that one is compensated "according to our abilitie," though men must seek no more than is "necessary" and "sufficient" to their station.[4] While the acquisition of profit is by no means bad in itself,[5] a calling must be profitable not only to the individual but to the commonwealth as well.[1] Therefore, riches must be attained and employed in moderation, and wealthy men may be honored only insofar as they are "made instruments to upholde and maintain vertue."[2]

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[1] I, 754.

[2] I, 756.

[3] I, 775.

[4] Perkins says that the rule for determining what is sufficient must be "the example and judgement of the godly, and grave men of our estate and order." (I, 768) Hill, op.cit., 229 underlines the bourgeois implications of this teaching: "...the discipline turns out to be, among other things, the imposition and maintenance of standards of social behavior agreeable to the employing class."

[5] Perkins is by no means unconditionally in favor of usury, though he argues that under certain circumstances it is acceptable, III, 163-4*. Accordingly, he clearly perpetuates a trend begun by Calvin. (See Nelson, op.cit., 68-82.) On the general point of the relation of Calvin, Puritanism and usury, Hill (op.cit., 219) is worth quoting: "Calvin came at the beginning of this reversal of values. He abandoned the traditional absolute prohibition of usury (which theologians had whittled away by allowing exceptions) and permitted it in principle (though restricting it very stringently in a great many particular instances). So revolutions in thought are initiated. This slight shift of emphasis, in the busy clothing centre of Geneva, was enough. Calvinism and lenience towards usury were henceforth regarded as syn-

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onymous, however much individual ministers insisted on the distinction between legitimate interest and extortionate usury." This against the extremely short-sighted observations of such writers as the Georges (*op.cit.*, 166f) and Robertson (*op.cit.*, 111f), who try to argue that Puritanism had a generally retarding effect upon the practice of usury. It may be, in this connection, that the particulars of Nelson's extremely ingenious thesis need careful examination, but in line with our concern, he is certainly right in stressing the positive relation between Calvinism and the emergence of values favoring functional universalism, or what Nelson calls "Otherhood." In an important footnote, he remarks: "...we do not consider the modern temper to have arisen merely by a process of 'progressive stripping off of legal and moral restraints upon the anti-social greed of the individual.' We have adopted the word *Otherhood* precisely because we mean to imply that modern liberalism, at its best, looks, at the very least, to the advent of a certain kind of Brotherhood, a Brotherhood in which all are brothers in being equally others." (*Op.cit.*, 81) Traditional status, rank, restrictions are broken down, and men become related on the basis of the functional contribution they can make to one another. It is not their inheritance that determines what they are, but their own *willingness* to labor.

[1] I, 764.

[2] II, 150. That is to say, they must labor usefully, While Hill basically understands this point, he misleadingly quotes only part of what Perkins actually says: (*op.cit.*, 229) "Men are to bee honoured for their riches." In the passage Perkins significantly modifies this statement: "I meane not for riches simply but for the right use of riches; namely as they are made instruments to uphold and maintain vertue." (Cf. Hill, 226) Riches in and of themselves are of no value--only as they are signs of unrelenting labor. That is why Perkins stands so strongly against the idle gentry--"such as live in no calling, but spend their time in eating, drinking, sleeping and sporting..." (III, 63-4; cf. I, 756, 764)

Of course, there is in Perkins a tendency to equate prosperity with the sign of God's blessing--that is, as the mark of, or reward for, voluntary industriousness. If one does a job well, he can, in general, be sure of prosperity (I, 772), for that kind of activity or obedience is precisely the direction of the will of God. (I, 766; I, 757; III, 5) The way in which this motif fits into the logic of order is clear: economic well-being for all is one of the ends of God's order, and voluntary obedience is the means by which it is achieved. However, Perkins allows that God may be "trieing" man by subjecting him to poverty. Therefore, he argues, men must not "profane their lives and callings" by seeking to "get honours, pleasures, profites, worldly commodities, etc. for thus we live to another end than God hath appointed, As endeavor and striving in a Christian's life are signs of regeneration, so unrelenting industry in one's personal calling is evidence of the precise apprehension of God's call. "Labour in a calling is as precious as gold or silver."[1] A man may lose a hand, but skill and diligence can never be lost. In other words, a man achieves his humanity through his specific, voluntary and intense activity in the order of God. The free and spontaneous activity he displays in his function is at once the measure of his individuality (his individual election) and the measure of his participation in God's order: he who hears the order fulfills the order.

That is why Perkins heaps such opprobrium upon the "slothful" and the "idle." Such people are the very incarnation of evil, that is, of disobedience and disorder. "Idleness," says Perkins, "is the shop of the divell."[2] "Slouth and negligence in the duties of our callings, are a disorder against that comly order which God hath set in the societies of mankinde, both in church and commonwealth...and, indeed, idelnes and slouth are the causes of many damnable sins."[3] Perkins lists four categories of "useless" people: 1) rogues, beggars, and vagabonds; 2) monks, friars and Papists in general, whose 52 holy days have meant that they "spend more than a quarter of a yeare in rest and idlenes";[4] 3) gentlemen "enriched with great livings and revenewes," who "spend their days eating and drinking" and serve neither church nor commonwealth; and 4) serving men, who, in their eating and drinking, yield nothing. No

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and we serve ourselves, and consequently, neither God, nor man... Men should be his instruments, for the good of one another." (I, 756-7)

[1] I, 751.

[2] I, 752.

[3] Loc.cit.

[4] It is interesting to observe how Perkins shares Cartwright's aversion to holy days for precisely the same reasons: they produce idleness.

doubt because there were so many of them at the time, Perkins is especially hard on the "sturdy beggar":[1]

> It is a foule disorder in any Common-wealth, that there should be suffered rogues, beggars, vagabonds; for such kind of persons commonly are of no civill societie or corporation, nor of any particular Church; and are rotten legges, and armes, that droppe from the body. Againe, to wander up and downe from yeare to yeare to this end, to seeke and procure bodily maintenance, is no calling, but the life of a beast: and consequently a condition or state of life flat against the rule: That every one must have a particular calling. And therefore the Statute (Anno 39, Eliz.) made in the last Parliament for the restraining of beggars and rogues, is an excellent Statute, and beeing in substance the very law of God, is never to be repealed.[2]

Giving alms to these idlers was, from Perkins' point of view, the severest of infringements of God's law. At all costs, those who were able must be "set on work," they must be urged, guided and, if need be, coerced to take their rightful place in God's scheme of things. So long as they are unemployed, so long as they do not eagerly and actively do what God has bid them, they remain the "plague of our times."

The point of central significance to our study is that the general or, roughly, ecclesiological activity of the Christian, and the personal or 'secular' (especially economic) activity are intertwined in Perkins' thought. "The generall calling of Christianity, without the practice of some particular calling, is nothing els, but the forme of godliness, without the power thereof. And therefore both callings must be joyned, as bodie and soule are joyned in a living man."[1] As we have seen throughout our treatment of the Calvinist-Puritan logic of order, the church--as the present embodiment of the new order--strains toward the creation of a new society. He who is a "living stone" in the building of the church is, by definition, a member of that new society. By genuinely taking his assigned place in the church and by participating willingly and eagerly, he is also taking his place in the society which is to be. Therefore, evidence of a repenting, endeavoring, willing conscience in the church will be matched by an energetic, industrious diligent conscience in the world, and vice-versa.[2] For Perkins, a Christian can have "a sure testimony of his election" whichever perspective he gauges his life from. It is all the same, since true repentance, etc. in the church demands social expression, and true industry, etc. demands faith in the grace of God. Election means voluntary participation in and obedience to the order of God, therefore, he who so participates is elect. He shares already in that new heaven and new earth toward which all things press. For him was the world created, and to him belongs the rightful dominion. He sets the ultimate standard for social life--he is, in short, a member of the "new elite."

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[1] The enclosure movement and inflation due to a sharp rise in prices were among the important economic causes for the increase of beggars in 16th-century England. See, for example, Hill, op.cit., 219ff.; Black, op.cit., E.M. Leonard, Early History of English Poor Relief (Cambridge, 1900).

[2] I, 755. Perkins' emphasis upon restraining the "sturdy beggar" did not preclude an attitude of charitableness toward the needy poor. W.K. Jordan in Philanthropy in England, 1480-1660 (New York, 1959) uses Perkins as the leading example of the English Calvinist position on philanthropy: For him, says Jordan, "the fact of wealth and the necessity of charity are inseparable, for almsgiving (affirmed Perkins) 'is the best kinde of thrift or husbandry...it is not giving, but lending, and that to the Lord, who in his good time will return the gift with increase,'" 152. Jordan continues: "The Calvinist not only said but he believed that we are but stewards of wealth for which we are accountable to God...This view of charitable obligation was remorselessly and deeply etched into the English conscience by a host of Calvinist divines..."

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1. I, 757.
2. Perkins urges that true religion be spread into every calling. (III, 246*)

Above all, he stands directly before God, free to pursue the "speciall duties of (his) lawful calling" (in church and world) without lesser earthly control or domination. Such freedom is his inheritance, it is the hallmark of his new life. The new society is regulated and harmonized by the consensual self-integration of all the varied functions of the elect. In fact, says Perkins, the new order is like a city, which is a "place of freedom," that is, "a place where generally are all necessaries and comforts for mans life: one part of the countrey hath this commodity, another that; but in the city are all, either brought unto it, or of itselfe."[1] Because of the wide range of possibilities, due to the high degree of diversity and differentiation, a city's life is to a large degree regulated by free choices and decisions of its members.[2] So, precisely is the new order. The Christian's whole existence is a struggle to become a "freeman of heaven, and never rest till he know he be."[3]

It is, then, in this intricate setting that the supremacy of the conscience and the freedom of the will are to be seen. The exalted role they play in Perkins' thought has the most central implications for the agencies of social control, namely for legal and political institutions.

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1. III, 79*.
2. See, for example, the extremely interesting essay by Karl Deutsch on the relation between free choice and urbanization in Daedelus, (Winter, 1961), 99-100. There is a striking anticipation of modern urban theory already in Perkins' writings. Indeed, the importance of these passages in our argument cannot be overestimated. Here is an unqualified exaltation of the city. It is chosen by Perkins to describe the character of the Kingdom or "City" of God. And it is chosen with reference to its economic significance, that is, with reference to the division and interdependence of labor. The inseparability of industrialization and urbanization is, of course, obvious. That Perkins should here wax so eloquent over the city further underlines the positive affinity of the logic of order he is espousing to the 'rise of capitalism.'
3. III, 80*.

> ...now the courts of men and their authoritie are under conscience. For God in the heart of every man hath erected a tribunal seat, and in his stead hee hath placed neither saint nor angel, nor any other creature whatsoever, but conscience itselfe, who therefore is the highest Judge that is or can be under God; by whose direction also courts are kept, and lawes are made.[1]

The revolutionary thrust of these words cannot be missed, even though Perkins hastens to add that the "wholesome lawes" of man made by the magistrate and implemented by the courts are certainly binding and may not be disobeyed with impunity. The positive law of the commonwealth is directly commanded and supported by God as "bones and sinews," as "props and pillars" to uphold the commonwealth. The magistrates have a mandate from God rigorously to enforce these laws through corporal punishment.[2] But they are enacted with respect to "things indifferent,"[3] to "owtward life," while the laws of God, such as parts of "Gods worship," moral behavior, and also business dealings, transcend human laws.[4] According

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[1] I, 530, 529.

[2] II, 437.

[3] II, 190.

[4] It can hardly be accidental that Perkins singles out business dealings as a realm for special Christian responsibility over and above prescriptions of the law. "For it is the dutie of every Christian man, to remember in all his bargains and dealings, that his maner of dealing, must not onely be warranted by the lawes of the land, but even by Gods Word also: and this is to be known and taken for a generall rule in all this treatise" (A Treatise of Christian Equity and Moderation), II, 440. Business activity is a special field of Christian freedom.

Perkins' special concern for the businessman's "bargains and dealings" (his contractual relationships) provides an opportunity to mention in passing the motif of contract or covenant in Calvinist-Puritanism to which Perry Miller has called attention in "The Marrow of Puritan Divinity," Boston, Colonial Society of Massachusetts, 1936. Miller has helpfully shown how 'covenant' or 'contract' became a central concept in the 'Federal theology' of 17th-century Puritanism. He argues that the emphasis upon a contract between man and God served to modify the irrational, incomprehensible aspects of John Calvin's God, and make him more 'reliable' (to use Miller's word), or more predictable. Miller sees this notion as, in general, an elaborate extension, if not to Perkins, human or positive law is law in its "extremitie." It appears

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a departure from, the theology of Calvin and of a late 16th-century Calvinist like Perkins. So far as Miller can tell, "the special quality of the Puritan emphasis upon the covenant does not...seem to derive from historic theology at all." (Ftnt. 2, 258) He suggests that the background of the Puritan notion may be the "common-law conception of the covenant, the idea of a formal agreement of legal validity, a promise or contract under seal." Miller finds almost no mention of the covenantal idea in Calvin, and rather little emphasis in Perkins.

I am not completely happy with Miller's formulation, not so much because of what he does as what he does not say. It is certainly true that the idea of contract gets developed and takes on dimensions in the 17th century in ways quite foreign to primitive Calvinism. But there are suggestions in Calvin and Perkins of a kind of contractualism that squares at a fairly deep level with the logic of order they share. Certain references to contract in Calvin, for example, bear further investigation: "For the sacraments resemble covenants (contracts), or instruments of agreement, by which God conveys his mercy to us, and in it eternal life; and we, on the other hand, promise him obedience." (IV, 13, 6) "And since the Lord calls his promises *covenants*, and the sacraments *seals of covenants*, we may draw a similitude from the covenants of men." (IV, 14,6) For Calvin a sacrament is a profession "by which we *testify our agreement with all Christians* in the worship of God..." (IV, 15, 13; italics supplied) As Miller himself points out, Perkins uses the term "Covenant of Grace," meaning God's "contract with man, concerning the obtaining of life eternall, upon a certaine condition." (I, 32) Perkins also uses the term in connection with his discussion of marriage. It is central to making a contract, he claims, that there be "the free and full consent of the parties, which is indeed the very soule and life of the contract." (III, 681) The emphasis upon free-willing or consensual agreement as the basis of a relationship between God and man or man and man is implicit in the system of thought we are treating. In fact, in Calvin, Cartwright and Perkins there is no other basis for relationship than 'contract' or 'covenant,' if these terms mean voluntary, uncoerced agreement.

That is why the particular passage on business dealings or contracts, quoted above, is so interesting. Here is an area of human relations that transcends the normal province of human law. These dealings stand directly under God's word, that is under the rubric of voluntary agreement. Lacking incentive, men ought, says Perkins, to be coerced by the magistrate to fair business practice. "But it is better, he says, "to do it of themselves, then to be compelled to do it by authoritie: for every vertue and good worke, the more free and voluntarie it is, the more acceptable it is to God, and more commendable before men..." (II, 440)

It may well be, as Miller says, that 'contract' is not extensively developed in Calvin and Perkins, and were it to have been, that it would not have followed the paths of 17th-century Puritanism. But I am by no means convinced that the Puritan emphasis upon the idea "does to him as set, unbending, coercive.[1] It needs a varying, unpredictable "mitigation" or "equitie" which can only be supplied by the law of God. "Equitie is Christianitie," he says, which "was before there were any lawes of men:"[2] He therefore concludes that positive law "must be according to the rules of Christianitie," that is to say, according to that life in which men regulate themselves on the basis of free, conscience-felt mutuality and not on the basis of hard and fast coercive rules. The magistrate ought to urge men to live with one another in relation to such equity, "but it is better for them to do it of themselves, then to be compelled to do it by authoritie: for every vertue and good worke, the more free and voluntarie it is, the more acceptable is it to God, and more commendable before men..."[3]

The laws of the land, therefore, must be framed according to the equitie of God, which is the end of the law. While they have a restricted degree of autonomy, they are not ultimate, but decidedly subordinate to the purposes of God:

> Men in making lawes are subject to ignorance and errour: and therefore when they have made a law (as neere as possibly they can) agreeable to the equitie of Gods law, yet can they not assure themselves and others, that they have failed in no point or circumstance. Therefore it is against reason, that humane lawes being subject to defects, faults, errours, and manifold imperfections, should truly bind conscience, as Gods lawes doe, which are the rule of righteousnesse. All governours in the world (by reason that to their old lawes, they are constrained to put restrictions, amplifications, and

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not derive from historic theology at all." One may, in fact, venture to say that the important background for the term was not only legal, but also theological (see IV, below).

[1] Human law, thus, is tied to the old order. It operates, as for Calvin, on necessity and not on freedom.

[2] II, 441.

[3] II, 440.

> modifications of all kindes, with new readings and interpretations) upon their daily experience see and acknowledge this to bee true...[1]

Human laws can bind neither the context of the regenerated conscience, namely the church (which is ruled directly by Christ),[2] nor, as we have seen, the conscience itself.[3]

An individual citizen may even disobey the law of the land if in his judgment the end of the law (the purpose of God) is advanced by his action! For example, says Perkins, a person is quite justified in opening the gates of the city to allow citizens in, even though the magistrate has declared absolutely that no man shall open them, because he has not hindered the end of the law, which is to protect citizens' safety. This example is exceedingly instructive. Who is it, in Perkins' scheme, who grasps the end of the law? Who is it who perceives that toward which all laws drive? It is, of course, the genuine Christian. In effect, he stands above the law with a special capacity to judge it, because he stands in a new order toward which all earthly law points and in which it is fulfilled.[1] In the new elite, he has become a law unto himself.

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[1] (I, 214-50) For purposes of comparison, this passage is astoundingly at odds with official Anglicanism, and with the general position of the common lawyers, for example, of Coke. From both their respective points of view (which, we shall later try to show, have deep similarities), such condescending comments about human law could only be regarded as heresy. With very minor exceptions, for Whitgift, Hooker, and Coke, the law of the land--the "old lawes," as Perkins calls them--are themselves the rule of righteousness, are themselves God's law. The Calvinist-Puritan emphasis upon the distinction between human and divine law, or old and new order, is here sharply opposed to Anglican identification of human and divine law. (See III.)

[2] It must, however, be pointed out that while Cartwright, perhaps more consistently, rejects all possibility of ecclesiastical courts, Perkins concedes the need for them "for reprehending and punishing of all those sinnes which the civill court reacheth not unto." (III, 293*) Still, this reference would seem simply to emphasize Perkins' soft view toward the existing ecclesiastical structure and his readiness to compromise, particularly because I found no other reference or justification for ecclesiastical courts than this one. One passing reference can hardly be compared to Whitgift's extensive and ardent defense of church courts. For him they mean something because they fit vitally into his point of view.

[3] I, 527. "For body and goods and outward conversation, I grant all: a subjection of conscience to mens laws, I deny." At III, 246*, Perkins makes a very interesting remark: "In the courts of men, thoughts and inward motions beare no action; but with God it is otherwise." It is important to bear this in mind with respect to some comments we shall make concerning the changing character of the law of contract around the turn of the 17th century. (See IV)

The agencies of legal and political order are certainly subordinate and subservient to the purposes of God, but they do perform a positive function, as with Calvin and Cartwright. The magistrate, because of his use of coercion, can never accomplish the final end of God, but at the same time he must subject his office to God, and serve him insofar as he can. His essential task is to drive men in the direction of election, toward a conscience and will that are voluntarily obedient to God. "True it is, the will cannot be compelled; and true it is likewise, that the Magistrate doth not compell any to beleeve: for when a man doth beleeve, and from his heart imbrace true religion, he doth it willingly: notwithstanding meanes are to be used to make them willing, that are unwilling, and the meanes is to compell them to come to our assemblies, to heare the word, and to learne the grounds for true religion..."[2] This will mean that idolaters, blasphemers, witches and the like must be put to death, unless they reform, for a will hardened against God is the very definition of disobedience and the source of all disorder.[1] They it is who threaten the foundations of the order of God, and therefore of the society of man. The 'moral law'--the first table of the Decalogue--must, for this reason, be rigorously enforced by the authorities.

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[1] Porter in Reformation and Reaction, 144, remarks that in the 1580's one of the most popular Puritan themes in the Cambridge pulpits was that "any sentence given by a judge is to be examined of every private man, by the Word of God;" "it deserveth not obedience, if by them it be not found to be thereunto agreeable..." This is the obvious context for Perkins' thoughts along these lines.

[2] II, 412. At III, 365*, Perkins states that punishment is not for revenge, but "to bring...to amendment, and to make...obedient to the will of God." The will cannot be compelled and yet it must be compelled. This is the same tension we have seen throughout our study with reference to the relation of coercion and freedom.

By the same token, he who is idle and slothful, who will not voluntarily assume the duties of a calling, and who is of no use to society, is no better than a thief. "The Magistrate is to punish him for his idlenesse, and compell him to labour."[2] Like the heretic and blasphemer, he threatens the order of God at its heart. A conscience and a will hardened against the call of God are intolerable. They must either be broken or eliminated.

Our analysis of the Calvinist-Puritan logic of order has demonstrated the amazingly consistent development of an interpretation of and an orientation to social life having the deepest affinities with a burgeoning "bourgeois society."[3] Implicit in the logic is the emergence of a "new

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1. II, 251-252.
2. /II, 145.
3. Anyone not thoroughly trained in the intricacies of 16th- and 17th-century English social and economic history must be extremely reluctant to use terms like 'bourgeois' or 'middle class' too facilely. There is, apparently, a profound sense in which the German adage applies: "Was man nicht definieren kann, das sieht als Mittelstand man an!" Nevertheless, there would seem to be a fair historical consensus that in the late 16th century, English social life was undergoing radical alteration, and that a new "commercial class" (variously referred to in the 17th century as the "middle ranks," the "middle class of men," the "middle sort") was emerging, and that it was assuming a central position in English life. In the words of Lewis and Maude, English Middle Classes (New York, 1950), "Trade and enterprise in the Middle Ages had been an obstacle race between the energies of merchants and the restrictions raised by the guilds and the Church." (36) In the 16th century a new social and economic movement began to

elite," a new class of men around whom the whole community is to be

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gather momentum caused by "the percolation downwards through the whole middle class of the sense of freedom to take risks and to live and build for oneself." (37) "The glory of such an epoch as the Elizabethan age," says R.H. Gretton in *English Middle Class* (London, 1917), "...does at least seem to (have)...rested in the main upon the development of the Middle Class." (114)

Exactly who should be included in this 'middle class movement' is, as we have hinted, not easy to determine. Its hard core was unquestionably formed by the growing group of urban merchants, traders and middlemen whose status and function was, in broad terms, defined not by ascription but by financial achievement. In the feudal system, both peasants and landed aristocrats had been bound and determined in their way of life by the land. But as the result of a whole host of factors, including the influx of great volumes of currency, investment, speculation and fluidity in buying and selling grew. Land as well as capital changed hands rapidly. That meant a drastic revision in traditional class patterns in favor of the new "land-buying class." (On this point, it is, to me at least, unclear how much the "landed gentry" and the "middle classes" are to be identified during our period. It does appear that there was a high degree of instability within the gentry: some were clearly rising (see Tawney, "Rise of the Gentry, 1558-1640," *Economic History Review*, XI (1941) 1-38), but others were declining (see Trevor-Roper, *The Gentry*, 1540-1640). The former were undoubtedly rising with the commercial groups, particularly since buying and selling of land was a means to gain status, both for the gentry and for the merchants.)

But what is important to see is the *transitional* or *mobile* character of class patterns due to the growing prominence of commercial or monetary activity. It was the fluidity of exchange that the gentry as well as the businessmen depended on for the attainment of status. (Tawney points out that "the landed gentry were increasingly sending their sons into business," *Religion and the Rise of Capitalism*, 173.) In other words, the commercial ingredient was decisive, and Gretton may not be ~~very~~ far ~~from~~ wrong in defining the "middle class" as "That portion of the community to which money is the primary condition and the primary instrument of life." (8) According to him, the "new trading," that was promoted by the middle or commercial class, provided the basis for "passing from the old way (of English life) to the new." (114)

Because of the growing ascendancy of what we call the commercial ingredient, it seems fair to speak of the corresponding ascendancy of the "middle class," which embodied that ingredient. It was during the late Tudor times, say Lewis and Maude, that the middle class gained a "great measure of control of national policy..." (32) "Besides... providing a kind of solid core, at a period of flux and transition, the Middle Class," says Gretton, "prepared the way for the Elizabethan glory by introducing a new ideal of national progress." (115) We have already cited Lipson's mention of "an aggressive and progressive middle class bent on establishing its ascendancy..." (Ftnt. 1, 38.) Tawney organized. This class is, to an important degree, set free from the regulation of tradition, status, direct political and legal control. It stands, in part, above the law, possessing an autonomy that is characterized by voluntary and self-integrating cooperation in an economic framework.

He who enters the new order--who manifests his election to it through his willing, endeavoring, diligent participation--claims thereby that in his unrestrained activity resides the hope of society. His conscience-felt obedience is the keystone of true or ultimate order. For this reason, he has the right to enlist the force of law and political authority in subjecting the rest of society to his purposes and goals. It is not hard to understand how this logic of order was turned to the ideological purposes of the rising middle classes, how church and middle class became virtually interchangeable categories.

It was, of course, against this marriage as well as against the

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underlines the sense of self-conscious mission within the "business classes." They were, he says, "still sufficiently young to be conscious of themselves as something like a *separate order*, with an outlook on religion and politics peculiarly *their own*, distinguished not merely by birth and breeding, but by their social habits, their business discipline, the whole bracing atmosphere of their moral life, from a Court which they believed to be godless and an aristocracy which they knew to be spendthrift." (*Religion and the Rise of Capitalism*, 173, italics supplied) Hill in *Economic Problems of the Church*, 108, speaks of the "new standards of living" as well as the "new intellectual standards" that were set for English society by the rising middle class.

It is this sense of ascendancy, of being a "new elite," that we wish to emphasize. Precisely here is the point where the Calvinist-Puritan conception of a new order based not upon tradition, but upon individual initiative, not upon ascription, but upon function, relates to the dynamics of a burgeoning bourgeois society. One must, of course, be careful, for exaggeration and oversimplification--both in making connections and in denying them--are easy to come by. Our underlying concern in this study, be it remembered, is to analyse the independent logic of a given theological system in order to establish an adequate basis for comparison between religious systems and patterns of social action.

whole theological and social structure upon which it was based that the Anglican church levelled its own defensive attack. Archbishop Whitgift and Richard Hooker led the vigorous opposition to the Puritans with as consistent and far-reaching a logic of order as that of their opponents. That anyone should have confused their position with the Puritans' would, perhaps, have baffled them as much as it baffles us.

Chapter III: THE OLD ENGLISH ORDER AND ITS ANGLICAN DEFENDERS

> It must be observed, that the contempt of human laws implies injury offered to the majesty of God, insofar as he deemed it necessary that man should obey to men; and that every soul should be subjected to the higher powers; to such an extent that whoso despiseth a man endowed with power, despiseth not man, but God...I say that disobedience is the greatest and most infamous crime which carries with it many other faults, and opens a door to all profligacy. Therefore the prince's first care must be, for the glory of God, in whose place he stands, to maintain obedience.
>
> Stephen Gardiner, 1490?-1555,
> Bishop of Winchester.
> From *Contemptum humanae legis*

"The one definite thing which can be said about the Reformation in England is that it was an act of State." "The reformation was to be regarded as a return to the past, a vindication of the rights of the Crown against usurped jurisdiction."[1] In these two sentences Sir Maurice Powicke summarizes the twin pillars of the Anglican establishment and two of the fundamental components of its logic of order: the supremacy of the state *over* the church and the legitimation thereof "by divers sundry old authentic histories and chronicles."[2] It was these pillars, as indispensable to each other as they were to the

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[1] Sir Maurice Powicke, *The Reformation in England* (Oxford Paperback, 1961), 1 and 51 respectively. This is an unquestionably brilliant essay to which we are indebted for the historical background of Whitgift's and Hooker's position. There is, alas, one major shortcoming in the essay with regard to the Presb yterian Puritans. Powicke himself admits in a footnote that "it is impossible to do justice in such a brief account to the complicated story of the Presbyterian movement" (fnt. 1, 152). But, in equating them with the Anglicans on the question of establishment (148), he has done them more than an injustice of neglect. Powicke, like so many scholars, misses the dynamics and direction of the Puritan system in the 16th century. About all one can really say is that both camps had doctrines of establishment. The similarity ends there. Presbyterians and Anglicans certainly were *not* "agreed on the fundamental issue." (148)

[2] Act of Parliament, February, 1533.

~~each other as they were to the~~ support of the old English order, that were manfully defended by divines from Gardiner to Laud against the successive onslaughts of Roman Catholics and Puritans.

With respect to the first, the supremacy of the state, Powicke demonstrates that from as early as the Constitutions of Clarendon in 1164 the control of real property and the rights of advowsons and benefices rested in the hands of the English crown and the barons. There was a strong tradition favoring lay economic control over the church, even though religious harmony had been maintained between England and Rome. Moreover, the Statutes of Praemunire were interpreted increasingly by the English kings in favor of royal supremacy over private or foreign jurisdiction in legal affairs. The comparative ease and naturalness with which the dissolution of the monasteries (1536-40) was accomplished, as the result of lay control over monastic property, further exemplifies the inherent weakness of Rome's hold on late mediaeval English institutions. In other words, the transfer of complete power over ecclesiastical matters to Henry VIII in 1532 was, from the English point of view, not nearly so novel as one might think. The inseparability of church and state had deep roots in English mentality.

In fact, as Powicke makes clear, the reformation occurred *not* because of the development of a national religious consciousness and a national church over against Papalism, but rather because Englishmen as a whole were "very insular and English"![1] They were--including the ecclesiastics--conscious of what they understood to be their hallowed institutions and traditions.[1] They owed allegiance to a society whose self-contained integrity was the product, they thought, of "ancient ordinances, rites, and long approved customes, of our venerable predecessors," as Richard Hooker was to put it. It was a society in which the law and order of God was barely distinguishable from the law and order of man. Indeed, for all intents and purposes, one *was* the other. For this reason, the clergy quite readily subordinated themselves to the control and limitation of the common law.[2] The reformation appeared to be a vindication of the divine authority of the English past. It returned to the country its time-honored, religiously sanctioned old order, rid once and for all of "foreign domination" by the Pope.

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[1] *Ibid*., 14.

The king, of course, was regarded as the central focus of traditional English institutions. By no means should he rule arbitrarily, nor was he a law unto himself. Bracton had long since laid it down as an axiom of English political life that "Rex non debet esse sub homine, sed sub Deo et lege." He was to rule as the Crown-in-Parliament, and

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[1] As F. W. Maitland writes in *The Constitutional History of England* (Cambridge Paperback, 1961), 21: "From the beginning of Edward's reign, English law becomes always more insular, and English lawyers become more and more utterly ignorant of any law but their own."

[2] *Ibid.*, 11. It must also be noted, as Sir Charles Ogilvie in his *King's Government and the Common Law* (Oxford, 1958) points out, that for a variety of reasons Henry VIII saw fit to appease the Common Lawyers at the decided expense of the Civilians (the study of Canon Law was forbidden). In a proclamation in 1546 Henry laid it down that nearly all pleadable cases could only be undertaken by a Common Lawyer trained in an Inn of Court. At the same time, there were festering tensions between the Equity and the Common Law courts, tensions that were to seeth to the surface in the late 16th and early 17th centuries.

Parliament was, in turn, a law court.[1] The king must govern in relation to and in accord with the laws of the land, whose validity had been established "time out of mind." But a serious conflict between king and law was scarcely contemplated up through the reign of Elizabeth, nor was a serious conflict between state and church. So continuous, so harmonious, so balanced was English society conceived to be that any suggestion of doubt regarding "traditionally" defined authority, status and function, any proposal for basic *re*organization or *re*order was by nature taken as anti-social. As the judicious Hooker had it, "there are few things known to be good, till such time as they grow to be ancient."

However, if there were deeply rooted historical factors that facilitated and lubricated the emergence of the English reformation, it was, nonetheless, a revolution. So long as the church of England owed its primary religious allegiance to the Pope, so long as it remained a branch of the Roman church, the full development of self-consciously independent institutions was impossible. The church's doctrines and practices were controlled by the Curia, and the church had its own legislature and courts, shaped and informed not by common law but by Roman canon and civil law. English kings could by no means disregard Papal power and influence, as Henry II learned after the murder of Archbishop Becket. In fact, England had in large degree been unified and stabilized as a nation by the work of Roman Catholic missionaries, and its traditions and laws bore the unmistakable stamp of that activity. The earliest written law, says Maitland, "is already Christian, and so close is the connection between law and religion, that we may well believe that it has already undergone a great change."[1] Roman Catholic authority was a force to be reckoned with.

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[1] See, for example, G. L. Haskins, *Growth of English Representative Government* (New York, 1960) or G. H. McIlwain, *High Court of Parliament* (New Haven, 1935) for elaborate discussions of the legal nature of Parliament at this time.

This authority had served as a unifying and stabilizing factor so long that its elimination raised in the profoundest and most far-reaching way the question of social authority. If the break with Rome was the result in part of an indigenous English self-consciousness, it had the effect of intensifying that self-consciousness, of driving Englishmen, when necessary, to manufacture the foundations for social life out of their own traditions. The dramatic need for a new authority set them in search of self-authenticating institutions, urged on them the belief that no segment of their common life, including the church, needed to rely upon anything but their own sovereign past.

It is, we are claiming, the English reformation that stimulates and focuses the creation of what has aptly been called "an ideology of historical consistency," or "a fiction of continuity."[2] This same ideology, this same fiction, which plays so significant a role in subsequent conflicts of authority in the 16th and 17th centuries between Crown, Parliament and Law, had a ready ally in the religious logic of order emerging at the time in the Anglican church. It is no accident that in raising the question of the foundations of religious authority, the English reformation raised simultaneously the question of authority in law and politics. Certainly no assessment of the "old English order" can be adequate without an evaluation of the religious thought that buttressed it.

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[1] Maitland, op. cit., 2.

[2] Professor Harold J. Berman used these expressions in private correspondence.

I.

John Whitgift (1533?-1604)

In 1576, in response to Elizabeth's command that Puritan preachers be diminished and the "prophesyings" stopped, Archbishop Edmund Grindal stood bravely by his Calvinist convictions, and informed the Queen in a long letter that she was not the ultimate earthly authority over the church of God. "Remember Madam," he wrote with no little temerity, "that you are a mortal creature...; and although you are a mighty Prince, yet remember that He which dwelleth in Heaven is mightier." The letter infuriated Elizabeth, and Grindal was promptly suspended from his duties and confined to his home, where he died in 1583. His death terminated the direct influence of the fraternity of Marian exiles within the Church of England.[1] An era of undivided official loyalty to the Crown and to the society it symbolized was dawning. It would last until the decapitation of Laud.

John Whitgift epitomized that era. He was, according to this biographer, the typical English churchman.[2] He assumed the office of

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[1] Neale, op.cit., I,372-373.

[2] P.M.Dawley, John Whitgift and the English Reformation. (New York,1954),x.

Archbishop of Canterbury in 1583 after a rather active career as Master of Trinity College, Cambridge, and Regius Professor of Divinity. During that time he became accustomed to debating with Puritans, developing a particular dislike for them and all they stood for. It would have been as impossible for him to utter the above words of Grindal, as to espouse any of the characteristic elements of the Calvinist-Puritan system of thought. By no stretch of the term could he be called a 'Calvinist.' Despite the Lambeth Articles in 1595, which were a superficial victory for certain Calvinist doctrines, 'high' Calvinism was decidedly on the wane within the Anglican Church, and Whitgift, wherever possible, suppressed its influence. Dawley remarks that the "anti-Calvinistic party in Cambridge were invariably the recipients of his patronage and ecclesiastical favors."[1]

Whitgift was in all respects a dedicated son of the Henrician and Elizabethan settlements. No sooner had he assumed office than he published six articles to which the clergy were required to give unqualified subscription. The first underlines his devotion and summarizes his position: it demanded the ecclesiastical supremacy of the Crown.[2] Nor was he inclined to leave subscription up to the individual. He quickly converted the High Commission into a smooth, efficient investigatory agency whose main weapon was the notorious oath of *ex officio*.[1] Its success in rooting out Puritans was impressive, and it was mainly responsible for the enfeeblement of Puritanism toward the end of Elizabeth's reign. Such methods, on the other hand, provoked the gentle Burghley to describe Whitgift's High Commission as "too much savoring of the Roman Inquisition." It is doubtful that Whitgift was as tolerant and forebearing as some have claimed.[2] He was too ardent a defender of the old order.[3]

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[1] *Ibid*., 214. Porter, *op.cit*., 413, further confirms this. He discusses the strong Cambridge opposition of Overall, Baro, Barrett, and Lancelot Andrewes, all of whom contributed to the 'eclipse of Calvinism' in the Anglican church. "...The Calvinist claim was more tenuous, and less overriding, in the Elizabethan Church of England than has sometimes been believed. It has been one of the aims of this study to demonstrate that John Whitgift, too, was aware that 'our Church holds the middle path': *mediam viam tenens*."Cf. also, McGinn, *AC*, 30 for a confirmation of Whitgift's anti-Calvinism.

[2] See Betteson, *Documents of the Christian Church*, 330.

Whitgift is not a systematic theologian, nor does he make very positive statements about what the position of the Anglican church *is*. His writings are primarily defensive and negative, and his thought is incomplete apart from Hooker, who fills in the gaps and shores up the underpinnings. But the unmistakable outlines of his logic of order are there: he paves the way for Hooker. "With Whitgift on one side and Hooker on the other (the Church of England's) essential characteristics become established."[4]

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[1] See ftnt. 1, 141.

[2] For instance, Dawley, *op.cit.*, 186 or Rowse, *op.cit.*, 475

[3] For a somewhat more realistic appraisal, see *Neale*, II, 21-23; Black, *op.cit.*, 162; Powicke, *op.cit.*, 131

[4] Rowse, *op.cit.*, 388. Summarizing the relationship of Whitgift and Hooker to the Anglican church, Dawley states: "Possibly the uniquely distinctive feature of the Reformation experience of the English Church was the achievement of a synthesis between the Christian elements in the Renaissance awakening and the truth that was preserved and transmitted through the mediaeval order. In that invigorating synthesis Anglicanism finds its justification. On its appeal to Scripture the evangelical spirit of John Colet triumphed over the narrow biblicism of Thomas Cartwright. In its appeal to tradition a faithfulness to history, informed and controlled by the claims of reason, opened to Richard Hooker not only the whole range of classical and patristic learning, but the creative insights of the

From a logological point of view, Whitgift stands sharply over against the Calvinist-Puritan position. Whereas for Calvin, Cartwright and Perkins, God's command breaks through the structures of worldly order and calls for a new order with a new kind of obedience, for Whitgift God's command emerges from the structure of things as it already exists. The command of God can in no way be discontinuous with the way things are, nor can the reverse be true. On the contrary, the divine command issues in the existing order, and the existing order gives form and content to the command. In terms of our general analytical scheme, both dimensions of 'order,' command and structure, are identical.[1]

4. (cont'd from 187) mediaeval schoolmen as well. The line of spiritual continuity is clear--from Colet to Cranmer to Jewel to Hooker, and then to the Caroline divines." "But the character of the new tradition was determined by the continuing shape of the old Church out of whose life it came. There is another succession--from Warham to Gardiner to Parker to Whitgift--the line of institutional continuity, the identity of the Church of England with its own past. In the long run it was the continuing life of the ecclesiastical institution that mattered most...It is well to remember that what came to maturity in the massive learning and simplicity of spirit of Richard Hooker is the constant potential of the ecclesiastical institution to which John Whitgift devoted his life." (193-4). While holding ourselves aloof from Dawley's lyrical attitude toward the Church of England, we would underline the deep relation he finds between the institutional structure of the church and Anglican theology. The two are quite inseparable.

[1] For Whitgift, it allows one qualification: the identification obtains only when the existing order is under the rulership of a "Christian prince." In fact, the Christian prince may defend Christians of another nation from the "imposition of idolatry." Presumably, he may declare war on the nation, for "his own kingdom is threatened by the idolatry of foreign powers." (Strype, Life and Acts of John Whitgift, D.D. (Oxford, 1822).) However, he offers no criterion by which the character of the Prince's religion can be measured or judged, in order to tell when he is properly "Christian" and when not. The prince's ultimate authority rests in the fact that he is established by tradition. By the same token, Whitgift offers no criterion by which the citizen can make sure that in obeying the prince he is doing "nothing against the word of God." (WW,I,21-2; cf. Strype,74) It is the magistrate who determines what is and what is not in keeping with the

For Whitgift, it is completely unthinkable to contemplate a differentiation between established order and God's order, between earthly political authority and divine sovereignty. *Order is one*. The supremacy of political and legal institutions in his thought does not mean that God's rule is subordinated to them, it simply means that there is no essential difference between them. The framework of obedience (of social action) is, therefore, *conformity to*[1] "the laws established," "to the practice of all well-ordered states and churches."[2] For this reason, "innovations are (by definition) scandalouse and dangerouse."[3] There is absolutely *no* new order.

On the anniversary of Elizabeth's coming to the throne, November 17, 1583, Whitgift preached a sermon on obedience to the powers that be. He closed with these characteristic words:

> Let us provoke one another to love and peace, because the days are evil, and the time short. And so shall our God, the author and giver of all peace, bless us with it in this world, and with an everlasting peace in the world to come.[4]

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[1] (cont'd from 188) word of God: he has the last word over affairs ecclesiastical. Therefore for England Whitgift is quite certain that God's command agrees with the existing order. When the Puritans claimed that they would in fact do nothing against the word of God, even if it meant disobeying the Queen, Whitgift significantly answered that *they* could not make such a judgment. If they did, they were setting *themselves* over against the established authority of the Queen. He had them coming and going. With respect to *action*, the word of God and the word of the Queen are identical.
Whether Whitgift took adequate account of the possible conflict between God and ruler is a fair question, but Whitgift would not have understood it. His logic of order at bottom presupposed the identity of the two.

[1] Whereas the Calvinist-Puritans may be said to express obedience generally in terms of *re*-form ("ecclesia reformata semper reformanda"), the Anglicans may be said to express it in terms of *con*-form. This all-important distinction characterizes, of course, the essential conflict between them.

[2] Strype, *op.cit.*, 127; [3] *Ibid.*, 126; [4] Strype, *op.cit.*, 81.

Undisturbed peace and harmony is the goal of Whitgift's life and the keynote of his theology. The gospel of Christ is above all a "peaceful" gospel. Quoting Brentius, he says: "For Christ came not to trouble civil laws, and the ordinary governments of the kingdom of this world, but rather that, these being preserved, his gospel might be preached quietly."[1] The word of God, embodied in Christ and recorded in the Bible, does not conflict with the existing structure of things; it is, at most, supplementary to it. It deals primarily with salvation and everlasting life, affairs that are "invisible" and "spiritual" and therefore, according to Whitgift, incapable of institutionalization. The word of God is addressed to the internal conscience and heart of man, to be sure, and those who rightly respond are counted among the elect of God; they constitute the invisible church which is destined for everlasting life. But their response embodies no new form of social behavior. It amounts, rather, to obedientiam actionis to the command of the magistrate as against giving him merely "cap and knee."[2]

> There are, he says, two kinds of government in the church, the one invisible, the other visible; the one spiritual, the other external. The invisible and spiritual government of the church is, when God by his Spirit, gifts, and ministry of the word, doth govern it, by ruling in the hearts and consciences of men, and directing them in all things necessary to everlasting life, and it is in the church of the elect only. The visible and external government is that which is executed by man, and consisteth of external discipline, and visible ceremonies practised in that church, and over that church, that containeth in it both good and evil, which is usually called the visible church of Christ.[3]

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[1] WW, I, 155; cf. WW, III, 192.

[2] Strype, op.cit., 73.

[3] WW, I, 183.

So far as actual social order is concerned, it is the visible church that is of exclusive importance in Whitgift's scheme. From first to last, it stands under the earthly prince, established by and responsible to his command.[1]

> I am persuaded that the external government of the church under a christian magistrate must be according to the king and form of government used in the commonwealth; else how can you make the prince supreme governor of all states and causes ecclesiastical? Will you so divide the government of the church from the government of the commonwealth, that, the one being a monarchy, the other must be a democraty, or an aristocraty? This were to divide one realm into two, and to spoil the prince of the one half of her jurisdiction and authority. If you will thereof have the queen of England rule as monarch over all her dominions, then must you also give her leave to use one kind and form of government in all and every part of the same, and so to govern the church in ecclesiastical affairs as she doth the commonwealth in civil.[2]

> I perceive no such distinction of the commonwealth and the church that they should be counted, as it were, two several bodies, governed with divers laws and divers magistrates...[3]

Furthermore, the Christian prince retains "supreme authority" "in deciding of matters of religion, even in the chief and principal points."[4] So ultimate is the power and authority of the crown in ecclesiastical matters, that offices and practices in the church's life are under its direct determination. "The bishops of this realm," he states, "do not...nor must not claim to themselves any greater authority than is given them (by statute). For if it had pleased Her Majesty, with the wisdom of the realm, to have used no bishops at all, we could not have complained justly of any defect in our church."[1]

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[1] The Queen's authority in the church is, says Whitgift, "given unto her by the laws of God..." (WW, II, 239).
[2] WW, II, 263; I, 392.
[3] WW, I, 21.
[4] III, 306

It becomes clear why Whitgift regarded as "absurd"[2] the Puritan notion that the basis for church order was to be found in the word of God--that is, in a special word demanding special obedience. In relation to the crown's command, the word of God is not special. To make such a claim was the central flaw in the Puritan position. Scripture, according to Whitgift, simply does not supply a system of church order, or any other kind of order. That is not its function. If it has a function with respect to behavior, it refers man to the magistrate as the source of order.

Against Cartwright's suggestion that sacraments are sufficient bonds of unity among Christians without coercion, Whitgift retorts: "such is the crooked and rebellious nature of man;" that "therefore hath God also appointed magistrates, and given them authority to make orders and laws to maintain the peace and unity of the church, that those, which of conscience and good disposition will not, by such laws and orders may be constrained at the least to keep the external peace and unity of the church."[3] Indeed, coercion or constraint, the indispensable handmaidens of earthly political-legal authority, are very much in place in the regulation of the church's life.

> God useth corporal punishments as a means to drive even the elect to the hearing of the word of God, and to honesty of life. He useth it also to bridle

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[1] Strype, op.cit., III, 222. Cf. J. W. Allen, op.cit., 177.
[2] McGinn, AC, 378
[3] WW, II, 62

> the wicked, that by their examples other men might learn to beware, and that they themselves also may be kept in order...Indeed, if these reasons of yours (Cartwright's) were of any force, the magistrate might put up his sword, especially in ecclesiastical matters...[1]

If any man be truly converted, even though he is prodded by the sword, his conversion, says Whitgift, is of God.[2] That the elect ought to be directed in their church activity by the "corporal punishments" of the magistrate is, despite certain "concessions to necessity,"[3] directly opposed to the conclusions of the Calvinist-Puritan point of view.

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[1] *WW, III, 437* [2] *Loc.cit.*

[3] The rather arbitrary power of the clergy in guiding the internal affairs of the church was, as we have seen, such a 'concession to necessity,' just as the cooperation between the clergy and magistrate was. Because there were inevitably some 'goats' within the church, there had to be a measure of arbitrary authority to restrain their disobedience, just as there had to be arbitrary political power within the world to "hold owte" sin. Certainly, those people who did not measure up to the image of the elect would be prodded by the magistrate's sword. We have shown how coercion was, in Calvinism, subordinated to the cause of the church.

Still, as Calvin said, "The Church neither possesses, nor ought to desire, the power to constrain, I speak of civil coercion..." The central point to be stressed in our contrast between Calvinist-Puritanism and official Anglicanism is that implicit in the former there exists the notion of a sphere of relations that is consciously set over against the civil order, one whose internal order is regulated by a polity *intentionally different from*, and, so the Calvinists believed, *superior to civil polity*. This polity institutionalized, to an extent at least, the democratic methods and ideals inherent in the Calvinist concept of a 'community of wills.' That Calvinism subordinated the state to the church did not simply mean that ecclesiastical dictators replaced secular ones. It meant that a new ideal sphere of relations,only partially implemented to be sure, became the model for all social life, and that this new order robbed the civil system of its ultimate legitimation.

Whitgift's position, on the other hand, gave complete, unambiguous justification to the civil system as the pattern for ecclesiastical organization and regulation. The methods and patterns of the one were automatically the methods and patterns of the other.

As we have mentioned, Calvinism was never very precise regarding

But Whitgift's reasons follow unavoidably from his premises: Order is one. Those methods by which it is achieved in secular life are exactly the same as those used in ecclesiastical life.

This, of course, is the reason why Whitgift supports ecclesiastical courts that are able, when necessary, to employ coercion and punishment. Against Cartwright, he urges that the Queen has seen fit to establish such courts, and that is reason enough.[1] She can, in other words, extend the capacity of adjudication and law enforcement to whomever she pleases. "The prince executeth his laws by himself; and he also executeth them by an other, to whom he hath given that authority for the fuller and better execution of them: in this number are the bishops; for the authority they have in such matters they have from the prince; and therefore their executing of it is not 'to divide stake with the civil magistrate."[2] We have already made reference to Whitgift's enthusiastic implementation of this notion in the High Commission. As he makes extremely plain, he will admit no "distinction of ecclesiastical and profane laws."[3]

The profound battle lines between Whitgift and the Puritans become particularly clear and dramatic in the exchanges over church polity. The rather exciting level of discourse achieved whenever the question of consensus is raised marks a highpoint in what is

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3. (cont'd from 193) the practical relations between the two orders, and there was in Geneva often a confusing "jumble" between them. At the same time, the Calvinists were passionately conscious of two orders that could never finally (or eschatologically) get on together.

[1] McGinn, AC, 339. [2] WW, III, 439. [3] WW, I, 389.

otherwise often tedious reading. In reaction to Cartwright's proposals for the election of church officers, Whitgift flings back at him: "You seek freedom from all laws of princes, and imagine that such perfection may be in men, that they shall not need to be governed by civil laws, but every man to be a law unto himself."[1]

> And indeed when are there more unworthy men chosen to offices, when is there more strife and contention about elections, when do partial and sinister affections more utter themselves, than when an election is committed to many?[2]

> The reason of the law is because, it being almost an impossible thing for all men in such a body to agree in one, and there being amongst men for the most part (as it were) a natural inclination to dissent and disagree one from another, there should never any law or order be made, if every singular man's consent should of necessity be had.[3]

In a sermon he remarks: "Ubi multum imperium, nullus ordo: ubi nullus ordo, sequitur rerum confusio; confusionem destructio."[4] Order is never to be produced by many, it is produced, as we have seen, by one. It is imposed from without, and may only be conformed to. It cannot inwardly transform the heart of man and thereby involve him in the creation of a new social order, as Calvin, Cartwright, and Perkins believed. On the contrary, since God's election can, to Whitgift's mind, have no visible or external fruits with respect to action, political election makes no sense in determining the order of the church. In this world men live without relief and without regret under the old order.

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[1] *WW*, II, 19. [2] *WW*, I, 130; cf. 372. [3] *WW*, I, 371.
[4] Strype, *op.cit.*, 72.

The same applies to Cartwright's argument in favor of equality and consensus among the bishops of the church. "For if the bishops were divided among themselves, and at variance, and had no superior, who should compound the controversies?"[1] For the Puritans, disorder could never be the end result of free exchange among the elect. For them voluntary activity creates true order; for Whitgift, it creates dissension and atomization, with every man tending where he lists. Like everyone else, a bishop must be "subject to orders and laws."[2]

Whitgift incisively perceives the *direction* of the Calvinist-Puritan logic of order. He sees that once the new order of God is allowed to express or institutionalize itself in the church, and that order is thereby split into 'old' and 'new,' the implications are clear: the new order will (logically) overtake the old. Puritan views of order, "when they come among the people, will be easily transferred to the state of the commonweal..."[3] In this Whitgift proved to be a wise prophet, though one horrified by his own premonitions. The devaluation of political and legal dominion, the emancipation of segments of society from its over-ruling control were prospects that aroused in him the stiffest possible resistance.

In the debate with Cartwright over holy days, Whitgift's opposition to all forms of voluntary activity shifts, significantly, from the ecclesiological sphere to the economic. He boldly defends governmental control of economic activity: the magistrate has "power and authority over his subjects in all external matters, and bodily affairs; *wherefore he may call them from bodily labour or compel them unto it, as shall be thought to him most convenient*..."[1]

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[1] *WW*, II, 211

[2] *WW*, II, 366.

[3] *WW*, II, 239.

[4] *WW*, II, 570, italics supplied.

> In things indifferent private men's wills are subject to such as have authority over them; therefore they ought to consent to their determination in such matters, except they will shew themselves to be wilful; which is a great fault, and deserveth much punishment.[2]...In bodily business he is to be governed by magistrates and laws. This doctrine of yours is very licentious, and tendeth too much to carnal and corporal liberty...[3]

The Puritans also declared that the magistrate has power and authority over 'external matters,' 'bodily affairs' and 'things indifferent.' But the question is *what* constitutes these things. According to the Puritan scheme, voluntary and consensual action in the church and business are most certainly *not* things indifferent.[4] For Whitgift, on the other hand, *all action as such* is external and indifferent, and therefore subject to royal regulation. For him it is invisible inwardness that constitutes the realm of true religion.

In our analysis of Whitgift, we must not, however, overlook the other all-important dimension in his thought. If he emphasized that all earthly action, including religious, was determined by the magistrate, he was no Hobbesian or Austinian in his conception of governmental decree. The king does not rule arbitrarily; he is no law unto himself. He rules in keeping with the tradition and the established laws of the land. In a circular way, his command emerges from the way things have always been and harmonizes the present with the past.

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[1] *WW*, II, 570, italics supplied. [2] *WW*, II, 571.
[3] *WW*, II, 570. [4] That is, of course, why the debate between the two sides takes place at just these two crucial points.

Logologically stated, the command of the prince is always an old order which perpetuates the old order (the 'traditional' structure of social relationships).

As a result, the organization of the church, with its hierarchy of rank and authority, does not depend only upon the command of the prince, but also upon the strength of tradition.[1] It is for this reason that Whitgift undertakes to debate with Cartwright on questions of church history. He was naturally not content simply to argue that the church came into being by the fiat of the prince. He constantly cites the fathers in justification of the Church of England.[2] "Stand not so much in your own conceit," he counsels Cartwright, "this order (of the Church of England) is most ancient in the church, it is confirmed by the best and noblest councils, it is allowed by the best-learned fathers, it hath the pattern from the practice of the apostles...it is the most meet for this state and kingdom..."[3] Rank and authority are the basis for proper order within the church as within the commonwealth. To allow these distinctions in the latter and not in the former were to contradict both the "very ancient histories" and the "great learned fathers" and the interests of "reverence, duty, and obedience."[4] It may even be a contradiction of the natural structure of reality--"the celestial spirits are not equal: the stars are not equal: the apostles themselves were not equal..."[5]—though Whitgift does not often enter the realm of natural and metaphysical speculation.[1]

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[1] It is well to remember that the distinction we draw here would have made no sense to Whitgift. One is the other. One finds Whitgift ever interchanging these dual authorities at random.

[2] WW, I, 214f, 252-7.

[3] WW, II, 262.

[4] WW, II, 189.

[5] WW, I, 158.

It boils down to what we have seen all along: "the province (if it be christened) is the church."[2] The order of one is the order of the other. On the basis of the 'traditional' "laws of God and man" (which are, at bottom, the same), Whitgift is quite confident that "we have the true doctrine of the word of God, and the right administration of the sacraments; and therefore to make contention in this church, and to disturb the quietness and peace, cannot be but mere schismatical, I will say no more."[3]

Furthermore, the prince himself is a "lawful magistrate" and a "lawful authority." In response to Cartwright's charge that a monarchy tends toward being excessive and tyrannical, Whitgift replies that the king of England governs "with equity and reason" "*according to the laws that are prescribed for him to rule by*."[4] "There is neither prince nor prelate in this land that ruleth 'after their pleasure and lust,' but according to those laws and orders that are appointed by the common consent of the whole realm in parliament, and by such laws of this monarchy as never hitherto any good subject hath misliked..."[1] Whitgift here wholeheartedly reaffirms the words of Bracton: the king rules *sub Deo et lege*. The laws of the realm completely correspond to and express the sense of order that exists in every "good" individual subject. That concurrence is made plain in the "common consent of the whole realm in parliament." The King's right to command does not contradict but confirms and fulfills the traditional order of proper social relationships, as any good subject has *always* seen.

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[1] As McGinn (*pp.cit.*, 293) points out, Whitgift does, however, affirm that in the 'spiritual realm' all men are equal. The point of difference between Whitgift and the Puritans was that for the Puritans the new transformation had begun to take place, had begun to be institutionalized, while for Whitgift apiritual equality remained a fully transcendental (in the sense of non-empirical) phenomenon. In this connection, Dawley's comments about the reception of the 'Renaissance awakening' in the Church of England (quoted in ftnt. 4, 187-8) are very pertinent. It is quite clear that there is more at work in Whitgift and Hooker than Renaissance humanism. Yet, with Renaissance writers as well as with Whitgift and Hooker, command and structure are identified: order is one; man's ethical obligation is to conform to what is; the 'golden age' and the 'spiritual realm' are completely transcendentalized, or rendered fully incapable of institutionalization. This similarity would indicate that the assimilation of Renaissance thought was extremely profound, and that even though official Anglicanism incorporated a rich variety of sources into its outlook, this continuity was particularly important. (Cf. our treatment of Stoicism and humanism above.)

[2] *WW*, II, 204. [3] *WW*, II, 243. [4] *WW*, II, 239.

Emphatically, the subjects do *not* possess within themselves the ultimate sovereignty to determine the law. On the contrary, the multitudes of citizens, "be they never so godly," are naturally prone to error and confusion, if left to themselves.[2] To live in harmony, they must *conform* to the "fundamental law"[3] that stands above and outside and behind them. Good subjects are those who express their *liking* of the law in parliament. Their consent simply reaffirms the supremacy of the already existing law. Of course, it would never have occurred to Whitgift that a real conflict between Parliamentary confirmation and the law of the land were possible, so continuous, unified and circular did the process of law and consent appear to him. But when he is pressed by Cartwright on this issue,[4] he holds firm to the objectivity of the law. You cannot create law on the basis of men's consent, for men have a "natural inclination" to dissent and disagree. Just because of that inclination, overreigning law is necessary, and "*it is therefore sufficient...if the laws, statutes, and customes of the place be observed*."[1] Obedience to the laws of England and to the crown which they authorize is the sum and substance of "true obedience" for Whitgift.[2]

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[1] *WW*, II, 240, italics supplied. [2] *WW*, II, 241.

[3] Whitgift himself does not use this term, but it is appropriate to describe what he had in mind. This will become clear in IV.

[4] See *WW*, I, 370-377.

The lines of dispute between Whitgift, the Anglican, and Cartwright, the Puritan, could hardly be sharper or more profound. It begins to be clear how utterly superficial are all views to the contrary. We have emerging before us a theological-ethical conflict between a *logic of conformation* and a *logic of reformation*, corresponding respectively to the types 'old order' and 'new order' which we have been using throughout this essay. For Whitgift, that which is new is scandalous--it contradicts the essence of God. For Calvin, Cartwright, and Perkins, God has, is and will make everything new.

Richard Hooker's *Laws of Ecclesiastical Polity* is in every respect an extension and a refinement of this logic of conformation. His lengthy fifth book he dedicates, significantly, to Whitgift. On the first page of that dedication he writes what may be taken as the core of his monumental *Laws*: "For surely I cannot find any great cause of just complaint, that good laws have so much been wanting unto us, as we to them."

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[1] *WW*, I, 371.

[2] *WW*, III, 586-96.

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II

Richard Hooker (1554-1600)

Richard Hooker lived a brief and rather uneventful life. As Christopher Morris remarks in his introduction to the Laws,[1] 'Hooker' might rather be the name of a book than of a man. His appointment as Master of the Temple in 1584 marked the beginning of the one exciting phase of his life, for it was as chaplain of the Inns of Court that he encountered head-on two of the bodies of opinion which shaped the writing of his Laws of Ecclesiastical Polity: Puritanism and English law.

Puritanism he met in the person ofWalter Travers, who was then lecturing at the Temple Church. Hooker and Travers engaged in countless heated theological exchanges which became increasingly painful to the new Master. His report of these exchanges is worthy of quotation because it reveals both his gentle character and his way of looking at Puritanism.

> I take no joy in striving, I have not been muzzled or trained up in it. I would to Christ they which have at this present enforced me hereunto, had so ruled their hands in any reasonable time, that I might never have been constrained to strike so much as in mine own defence...But sith there can come nothing of contention but the mutual waste of the parties contending, till a common enemy dance in the ashes of them both, I do wish heartily that the...strict commandment of Christ unto his that they should not be divided at all, may at length...prevail...to the burying and quite forgetting of strife, together with the causes which have either bred it or brought it up; that things of small moment never disjoin them, whom one God, one Lord, one Faith, one Spirit, one Baptism, bands of great force, have linked;...finally that no strife may ever he heard

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[1] Of the Laws of Ecclesiastical Polity. Ed. Christopher Morris. Two vols. London: Everyman edition. J. M. Dent. 1960, v.

> of again but this, who shall hate strife most, who
> shall pursue peace and unity with swiftest paces.[1]

Like so much of his writing, these words echo the sentiment of Whitgift,[2] who early recognized in this quiet, retiring individual a formidable champion of the Establishment, and made it possible for him to produce his great work[3] in semi-seclusion.

Living and working within the walls of the Temple for seven years, he was naturally in constant contact with the legal thinking of his day. It is said, for instance, that Edward Coke was frequently among his congregation at the Temple Church. The way in which he was to attack Puritanism was clearly influenced by these legal contacts. As Marshall says, "he was thinking in terms of the legal problems of the time, and...he was helping to crystallize the fluid

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1. *Works*, edited by John Keble (London, 1888) 3 vols. III, 596. (Henceforth referred to as III are all references to Books VI-VIII)
2. As J. W. Allen, *op.cit.*,185, remarks, "He owed far more to Whitgift than to any writer of the Continent. Hooker, in fact, was intensely and typically English."
3. As is well known, Books I-V are reliable. We are using the Everyman Edition of these Books (designated I for Books I-IV and II for Book V). We are using Keble (III) for the other three, which were regrettably mutilated when they were only in manuscript form, and finally published posthumously. With respect to VIII (upon which we draw most among these rather unreliable books) Allen says: VIII "may at least be taken as substantially representing Hooker's thought and contains much that one feels almost sure was written by him as it stands." (*op.cit.*,184) If the title, *Of the Laws of Ecclesiastical Polity*, is somewhat misleading to the modern reader, and might better have been changed to include and *Civil Polity* as Marshall suggests, such a suggestion would have baffled Hooker. He might have called it one or the other, but not both. The whole point of the work is that, at bottom, both polities are the same, subject to exactly the same logic. To separate them into two independent spheres of order, as the Roman Catholics and the Puritans wished to do, represented to Hooker a spectre of social disruption. All action was, in the final analysis, embraced within the unity and competence of the law of the land.

legal thought of his age."[1]

In the name of the old law and order of England, Hooker sought brilliantly to demolish the Puritans once and for all. He argued--not without reason--that "the world by receiving (their message) should be clean turned upside down."[2] Stability and coherence were England's only if she guarded the hallowed legal traditions bequeathed to her by the past. And, for Hooker, the lawyers were the yeoman of that bulwark. It remained to be seen, however, whether even the masterful Hooker could entirely quarantine the lawyers from the new order heralded by those "patrons of liberty."

No better nor more eloquent summary of Hooker's position exists than the famous concluding paragraph of Book I of the Laws:

> Of Law there can be no less acknowledge, than that her seat is the bosom of God, her voice the harmony of the world: all things in heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempted from her power; both Angels and men and creatures of what condition soever, though each in different sort and manner, yet all with uniform consent, admiring her as the mother of their peace and joy.[3]

"The being of God is a kind of law to his working;"[4] the seat of the Law, as he says, "is the bosom of God." "God doth determine of nothing that it shall come to pass, otherwise than only in such manner as the law of his own wisdom hath set down within itself."[5] God can will nothing irrational, unjust or bad;[6] he acts according to a higher universal rational law from which, as the above summary makes clear, it is difficult to distinguish him: "They err therefore who think that of the will of God to do this or that there is no reason besides his will."[1] Like Whitgift, and in diametrical opposition to the Calvinist-Puritan logic of order, the identification of command and structure in Hooker's thought could hardly be plainer. There is no possible separation between the two dimensions of order, a separation by which Calvin, as we have seen, differentiated between the old (fallen) structure of things and the new command of God, between the old command of political-legal power and authority and the new pattern of social relationships. For Hooker, Order is one: command emerges from structure and refers back to it again. God's "eternal decree is that we term an eternal law":[2] "the counsel of God, and the law of God...being one."[3]

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[1] Marshall, op.cit., 49.
[2] I, 132.
[3] I, 232.
[4] I, 150
[5] II, 513.
[6] Loc.cit.

A law, according to Hooker, is "any kind of rule or canon, whereby actions are framed."[4] All action, even that of God, is prescribed and regulated by law. Eternal law controls the universal order and being of things, and is immutable. Hooker concedes that all things do not conform to eternal law "as they ought to," but even actions that are "repugnant unto the law which God hath imposed upon his creatures" do at least work according to the "first law eternal," as distinguished from the "second law eternal."[5] This distinction is, significantly, not elaborated, and it is plain that the similarities between the two laws are more important than the differences, for Hooker remarks: "it is not hard to conceive how they both take place in all things."[1]

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[1] I, 153.
[2] I, 150, italics supplied.
[3] I, 154.
[4] I, 154; cf. I, 150.
[5] I, 155.

The eternal law is the law of being, by which everything that is unavoidably moves towards Goodness or perfection.[2] Evil or disobedience is failure to conform to ever higher perfection; it is being satisfied with the lesser good. Nevertheless, "because there is not in the world any thing whereby another may not some way be made the perfecter,...*all things that are, are good*."[3] All action is good, for no action is possible that does not to a greater or lesser extent conform to the eternal law of being. In some cases, it is simply not good enough.

The essential goodness of *existing* patterns of action, their assumed harmony with the order of things, is a crucial point in Hooker's logic of order. As we shall see more fully later, all human beings, by virtue of what they *are*, act with respect to "an infallible knowledge" "whereby both general principles for directing of human actions are comprehended, and conclusions derived from them; upon which conclusions groweth in particularity the choice of good and evill in *the daily affairs of this life*."[4] In sharp distinction both to the Roman Catholics, particularly Thomas, and to the Puritans, Hooker holds that all the activity of this life is and ought to be carried out in relation to the given structure of things by which "constant Law and

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[1] *Loc.cit.*

[2] *I, 164.* The Thomistic background of this thought is clear, and in many ways Hooker retains Thomistic categories, as is well known. But, as we shall see below, there are important respects in which Hooker's logic of order is hardly very meaningfully referred to as 'Thomistic.'

[3] I, 164. [4] I, 280.

Order is kept."[1] Consequently, he gives the Thomistic category of divine law" or "supernatural law" an important twist. Like Thomas, Hooker argues that the law of being impels man toward that infinite felicity and bliss found in the contemplation of God, who is the "end of all our desires." "the highest degree of all our perfection."[2] Also, as for Thomas, a fall occurred which deprived man of the attainment of the felicity he sought and subjected him to "sundry imperfections" or, quite precisely, disobedience to the eternal law of perfection. Christ by his obedience and death makes it possible for man once again to enter that "sea of Goodness whereof whoso tasteth shall thirst no more." By Grace and mercy to the elect, he opens the door to life everlasting in the Kingdom of God.

But for Hooker, unlike Thomas, this gracious gift remains absolutely invisible and transcendent. It in no way alters or adds to the patterns of action of this life. Whereas for Thomas, God revealed a divine law in Christ and in Scripture in the form of "supernatural" or "theological virtues" which become, to some degree, at least, embodied and expressed in the church's life, for Hooker, as for Whitgift, such revealed law remains fully supernatural. It is incapable of institutionalization. The supernatural virtues, faith, hope and charity, are described by Hooker exclusively in mystical-contemplative language.[3] Scripture, which is the means whereby divine law is revealed, has only to do with salvation and everlasting life, internal affairs of the heart and conscience which are known only to God.[1] It would be intolerable to think, says Hooker, that the redemption of Christ had anything to do with "outward actions;" rather, it is "by the secret inward influence of his grace" that he gives "spiritual life and the strength of ghostly motions..."[2] Divine law is in a strict sense 'ghostly' law. It is concerned with a distinctly transcendental world.[3]

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[1] I,152. [2] I, 203. [3] I, 209.

Hooker's view of the incarnation of Christ itself makes this plain. As Deity Christ possesses "gifts and virtues" that "make him really and habitually a man more excellent than we are, they take not from him the nature and substance that we have, they cause not his soul nor body to be of another kind than ours is. Supernatural endowments are an advancement, they are no extinguishment of that nature whereto they are given."[4] Christ adds his virtues to human nature by "inherent copulation," but in no way alters that nature by which the outward affairs of daily life are determined.

Those who are members of his mystical body, the invisible church, and who enjoy his inward gifts and virtues are, even as the gifts they enjoy, absolutely invisible to "our sense."[5] Only God can know who his elect are; man has not the slightest inkling, for he has no criterion by which to judge. Certainly, there is no kind of "gospel-like behaviour," such as the Puritans were alleging, which could serve as a criterion.[1] The invisible church has nothing to do with action in this life. Furthermore, even the visible church, which exists to testify to the true religion brought by Jesus Christ, is distinguished, not by its action but by its *outward profession*: "Church is a word which art hath devised thereby to sever and distinguish that society of men which professeth the true religion from the rest which profess it not."[2] "For," Hooker continues, "neither doth God thus bind us to dive into men's consciences, nor can their fraud and deceit (against God) hurt any man but themselves."[3]

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[1] II, 342-3. [2] III, 374.

[3] "Transcendental" seems the best word to describe Hooker's attitude toward the activity of Christ. It is not related to the world of action, that is, to the world of "our sense."

[4] II, 221. [5] I, 284.

> Touching parts of eminency and perfection, parts likewise of imperfection and defect in the Church of God, they are infinite, *their degrees and differences no way possible to be drawn unto any certain account*.[4]

It will be recalled that central to the Calvinist-Puritan system was the notion that precisely man's (inner) fraud and deceit "destroyed" the whole fabric of social order. Disobedience to God and social disorder are logical correlates. Just so, new obedience in the Body of Christ leads to a new social order. That is what the church is. The realm of conscience and heart is unavoidably a social or external affair. To this Hooker's position is strikingly opposed. For him the conscience is an internal-individualistic matter, with consequences only for everlasting life, something that is added (literally) over and above this life.

Therefore, whereas for the Puritans the distinction between the world and the church, the old order and the new, was of paramount importance with respect to action, for Hooker "the Church and the commonwealth are...one society, which society being termed a commonwealth as it liveth under whatsoever form of secular law and regiment, a church as it hath the spiritual law of Christ."[1] The visible church, with which Hooker is most concerned in arguing against the Puritans, is "in nature and definition" distinguished from the commonwealth, but not, as the Puritans claimed, in "substance."[2] In a most significant passage, Hooker argues:

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[1] II, 337-343.
[2] II, 337; cf. III, 329.
[3] II, 342-3.
[4] II, 338, italics supplied.

> We hold, that seeing there is not any man of the Church of England but the same man is also a member of the commonwealth; nor any man a member of the commonwealth which is not also of the Church of England; therefore as in a figure triangular the base doth differ from the sides thereof, and yet one and the selfsame line is both a base and also a side; a side simply, a base if it chance to be the bottom and underlie the rest; so, albeit properties and actions of one kind do cause the name of a commonwealth, qualities and functions of another sort the name of a Church to be given unto a multitude, yet one and the selfsame multitude may in such sort be both, and is so with us, that no person appertaining to the one can be denied to be also of the other.[3]

In relation to those patterns of regulation and relationship that characterize a given society or social order, the categories 'church' and 'commonwealth' are completely interchangeable--they are matters of definition, of 'accident.'[4] As Hooker's figure of the triangle makes clear, there is no real discontinuity between them.

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[1] III, 334.
[2] III, 328-9.
[3] III, 330; cf. I, 288-9.
[4] III, 336.

Because Jesus Christ has opened the gates of eternal life and has founded the true religion, the church is required to profess that fact and to provide the means whereby his redemption can, in a partial and inchoate way, be enjoyed. But these means of profession and mediation are primarily *sacramental*: "That saving grace which Christ originally is or hath for the general good of his whole Church, by sacraments he severally deriveth into every member thereof."[1] They are oriented toward a supplementary, or transcendental world, over and above 'the daily affairs of this life.' Ordinarily, the sacraments themselves are "signs effectual: they are the instruments of God, whereby to bestow grace; howbeit grace not proceeding from the visible sign, but from his invisible power."[2] They themselves are "moral instruments," making the hearts of men "like to a rich soil, fertile with all kinds of *heavenly virtues*..."[3] It is no accident that Hooker discusses the Incarnation and Redemption of Christ within the wider framework of the sacraments.[4] *The whole character of Christ's transcendental action for man is represented or signified in the action of the sacraments that is transcendental to earthly or social action*.

For this reason, Hooker consistently resists the Puritan emphasis that sacraments are fundamentally symbols or seals of a *new form of social life* among the participants in accord with God's Word. For the Puritans the new community was necessarily implied in communion with God, whereas for Hooker the sacraments are "instruments of grace unto every particular man,"[5] and, therefore, communion, for example, may be administered privately.[1] Hooker strictly defends the Anglican use of the singular 'thou' in the admonition of the Lord's Supper against the plural form urged by the Puritans. That is no idle difference. Hooker is defending an internal-individualistic understanding of the meaning of Christ's Redemptive act in opposition to the Puritans' directly social interpretation.

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[1] II, 236.
[2] II, 506.
[3] II, 505.
[4] See II, 200-236.
[5] II, 334-336.

The kind of distinction Hooker makes between faith and action, between the realms of the transcendental and the worldly, is especially sharp when we come to the dispute with the Puritans over the action of the church. He takes Whitgift's line of argument as completely obvious:

> that matters of faith, and in general matters necessary unto Salvation, are of a different nature from ceremonies, order, and the kind of church government; and that the one is necessary to be expressly contained in the word of God, or else manifestly collected out of the same, the other not so; that it is necessary not to receive the one, unless there be something in Scripture for them; the other free, if nothing against them may thence be alleged: Touching matters belonging unto the Church of Christ this we conceive, that they are not of one suit. Some things it doth suffice that we know and believe; some things not only to be known but done, because they concern the action of men...I somewhat marvel that they especially should think it absurd to oppose Church-government, a plain matter of action, unto matters of faith...[2]

With this, we move into the center of the debate between the two camps, the area of the so-called things indifferent. For Hooker we are virtually in an other-worldly realm when we discuss matters of salvation and faith. So far as the church is concerned, it is they that are ultimate, not the outward actions in this life. For the Puritans we are squarely in the middle of this-worldly action when we discuss salvation and faith. That is a big difference. This issue is not, as some have claimed, that the Puritans were simply overzealous and wooden interpreters of the Bible, while Hooker was broad, tolerant and reasonable in his outlook. Rather, it is a clash between two fundamentally opposed interpretations of life. The cleavage emerges with still greater clarity in Hooker's elaboration of the bases for social action.

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[1] II, 334-336.

[2] I, 299-300.

In the 'indifferent' affairs of daily life, the church must follow its own discretion based on the rulings of the magistrates and the laws of the realm, its own venerable custom, and the light of reason. Whatever combination of these various authorities finally determines the church's patterns of behavior, will be a matter of indifference[1] since they all possess a common unity in the *one* harmonious, all-pervasive fundamental law that is the ground of earthly action. Nor is this political, traditional, rational-natural law in any way in conflict with the divine law: "That which doth guide and direct (man's) reason is first the general law of nature; which law of nature and the moral law of Scripture are in substance of law all one."[2] Order is one, and all its manifestations are, by definition, completely consistent with the Eternal law and with each other.[3]

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[1] Action is "indifferent" because there is no *real* alternative to the way patterns of action *are*. No real "difference" can be conceived from what is. For the Puritans the difference between old and new was important in the extreme.

[2] I, 326.

[3] The distinction between natural law and rational law no longer exists in Hooker. Mosse, in *Struggle for Sovereignty*, 21, is certainly right in claiming that the law of reason is of central importance in Hooker, and that there is a crucial difference between Mediaeval conceptions of natural law (for example, in Fortescue)and Hooker's point of view. This will become still clearer as we proceed.

Above all, the objective structure of order that guides the church's life, as well as the life of every human group, is given, whether by 'necessity,' 'tradition' or 'reason.' The church is subordinate to the prince "even in matters of Christian religion"[1] because supreme secular government is necessary in human affairs, and that which is given for the necessary or 'natural' ordering of behavior must be of God.

> We are to note, that because whatsoever hath necessary being, the Son of God doth cause it to be, and those things without which the world cannot well continue, have necessary being in the world: a thing of so great use as government amongst men, and human dominion in government, cannot choose but be originally from him, and have reference also of subordination unto him. Touching that authority which civil magistrates have in ecclesiastical affairs, it being from God by Christ, as all other good things are, cannot choose but be held as a thing received at his hands; and because such power as is of necessary use for the ordering of religion, wherein the essence and very being of the Church consisteth, can no otherwise flow from him, than according to that special care which he hath to guide and govern his own people:[2]

By analogy, the same political and social structure ought to prevail in the church.

> Sith therefore by the fathers and first founders of this commonweal it hath upon great experience and forecast been judged most for the good of all sorts, that as the whole body politic wherein we live should be for strength's sake a threefold cable, consisting of the king as a supreme head over all, of peers and nobles under him, and of the people under them; so likewise, that in this conjunction of states, the second wreath of that cable should, for important respects, consist as well of lords spiritual as temporal:

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[1] III, 342.

[2] III, 380; cf. I, 188. As the focus of political order, the king, and not elections by the people, regulates political life. (III, 422-5; 225). Elections are 'unnecessary' since authority is given in the person of the king.

> nobility and prelacy being by this mean twined together, how can it possibly be avoided, but that the tearing away of one must needs exceedingly weaken the other, and by consequent impair greatly the good of all?[1]

Hooker stands squarely on the side of the established social structure and justifies all the attendant inequalities within the church against the "common conceit of the vulgar sort."[2]

> Again it may justly be feared whether our English nobility, when the matter came in trial would contentedly suffer themselves to be always at the call, and to stand to the sentence of a number of mean persons assisted with the presence of their poor teacher, a man (as sometimes it happeneth) though better able to speak, yet little or no whit apter to judge than the rest...[3]

> For we are not to dream...of any platform which bringeth equally high and low unto parish churches, nor of any constraint to maintain at their own charge men sufficient for that purpose; the one so repugnant to the majesty and greatness of English nobility, the other so improbable and unlikely to take effect that they which mention either or both seem not indeed to have conceived what either is.[4]

That religion is worthy, says Hooker,

> which no way seeketh to make (the nobility) vulgar, no way diminisheth their dignity and greatness, but to do them good doth them honour also, and by such extraordinary favors teacheth them to be in the Church of God *the same which the Church of God esteemeth them, more worth than thousands*.[5]

Furthermore, in passages of the utmost importance for our purposes Hooker emphasizes the 'necessity' for secular and ecclesiastical control

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1. II, 272.
2. I, 405.
3. I, 128.
4. II, 475.
5. II, 475, italics supplied.

(at bottom, the same control) over economic activity.

> Those things which the law of God leaveth arbitrary and at liberty are all subject unto the positive laws of men, which laws for the common benefit abridge particular men's liberty in such things as far as the rules of equity will suffer. This we must either maintain, or else overturn the world and make every man his own commander. Seeing then that labour and rest upon any one day of the six throughout the year are granted free by the Law of God, how exempt we them from the force and power of ecclesiastical law, except we deprive the world of power to make any ordinance ore law at all? [1]

Like the social patterns, that system of economic life which already exists, defined as it is by the established authorities, is to be taken as fully in force. The "solemn proclamation" by these "patrons of liberty" "that all such laws and commandments are void" and that "everyman is left to the freedom of his own mind in such things,"

> ...shaketh universally the fabric of government, tendeth to anarchy and mere confusion, dissolveth families, dissipateth colleges, corporations, armies, overthroweth kingdomes, churches, and whatsoever is now through the providence of God by authority and power upheld.[2]

The regulation of the church's daily actions by the necessary or given authorities is consistently complemented by an appeal to tradition. The polity and organization of the Anglican church have been clearly "received and held for the space of many ages"[3] which is in itself "cause why we should be slow and unwilling to change, without very urgent necessity, the ancient ordinances, rites, and long approved custome, of our venerable predecessors. The love of things ancient doth

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1. II, 363.
2. II, 362,3.
3. I, 425.

argue stayedness, but levity and want of experience maketh apt unto innovations."[1] And it is no accident that what tradition obviously teaches with respect to church polity, harmonizes so readily with the needs of secular politics. There is no law, according to Hooker, which has not at some time or another instituted the "conjunction of power ecclesiastical and civil."[2] The inherent unity between tradition and necessity is very deep.

Finally, the church has recourse to the third means for determining social action, namely, the law of reason. Hooker defines it as "that which men by discourse of natural Reason have rightly found out themselves to be all for ever bound unto in their actions."[3] As we would expect, he adds that the law of reason is "investigable by Reason, without the help of Revelation supernatural and divine."[4] At bottom, it is a law that is *universally binding*, one that manifests itself wherever reason is rightly employed with regard to social behavior. The church relies upon it just as does every other human group: *the law of reason is the law of action*. Indeed, Hooker comes close to saying that the law of reason adjudges not only suitable action, but even the "things of God" which are recorded in Scripture. "Those things also we believe, knowing by reason that the

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[1] II, 29.

[2] III, 250.

[3] I, 182.

[4] *Loc.cit.* As Munz, in his *Place of Hooker in the History of Thought* (London, 1952), correctly remarks: "The fine and important distinction which he (Hooker) derived from Thomas between reason and faith as two supplementary methods of finding natural law and divine law respectively, was wiped out." (62) Hooker, says Munz, established the "complete autonomy" of reason over the whole of life.

Scripture is the word of God."[1] "For whatsoever we believe concerning salvation by Christ, although the Scripture be therein the ground of our belief; yet the authority of man is, if we mark it, the key which openeth the door of entrance into the knowledge of Scripture."[2] To be sure, as we have seen, God's revelation in Christ adds something above reason and nature, but there is no conflict or discontinuity between them. In the light of Hooker's logic of order, how could it be otherwise? All is one grand unity and harmony. Reason will naturally concur with and confirm the higher revelation of God, even as it concurs with and confirms the demands of tradition and social necessity in church and commonwealth.

The point to be emphasized is the one that has been emerging throughout our discussion of Hooker's view of the church and of the place of religion. So far as action is concerned, the church introduces absolutely nothing new. If there is a "politic use of religion," as Hooker calls it, it is simply an inward encouragement to obey "the laws whereunto (one) should be subject."[3] That is, churchly or religious behavior is completely defined by sources quite outside its own province. At most, religion urges to conform to what is.[4]

We must, therefore, analyse these sources in the specifically political and legal context in which Hooker sets them. Basic to the entire system is the assertion that there exist "principles universally agreed upon" for the determination of human action. These are manifestations of what he interchangeably calls the Law of Reason or the Law of Nature.[1] "We see...how nature itself teacheth laws and statutes to live by."[2] Part of the requirements of this law is that "we are naturally induced to seek communion and fellowship with others,"[3] and, further, that "societies could not be without Government, nor Government without a distinct kind of Law..." In other words, natural or rational law demands and leads to "laws politic" for the maintaining of peace and public good. These latter human laws are made by and for particular societies, and they are only good and binding insofar as they express the universal approbation--both historically and contemporarily--of a given society.[4]

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[1] I, 319. Munz, *ibid.*, 59, continues: "there was indeed nothing... that would prevent him from looking upon the dictates of reason as the direct commands of God, and thus from excluding...God from the government of society."

[2] I, 267.

[3] II, 19.

[4] II, 12.

> The most certain token of evident goodness (of laws) is, if the general persuasion of all men do so account it...The general and perpetual voice of men is as the sentence of God himself. For that which all men have at all times learned, Nature herself must needs have taught; and God being the author of Nature, her voice is but his instrument. By her from him we receive whatsoever in such sort we learn.[5]

Vox populi is vox dei (as well as the voice of reason and nature), but in a very special sense. It must be the "general and perpetual voice" of men; it must be "that which all men have at all times learned. Hooker's logic of order works both ways; if the universal approbation of laws by a society is necessary to make them acceptable laws, the existence of a society living by laws to which it *is* accustomed signifies in itself the legitimacy and acceptability (or the approbation) of those laws. Antiquity betokens approbation. If the laws *have been* approved, that is a good reason why they ought to be approved.

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[1] I, 179.
[2] I, 187.
[3] I, 188.
[4] I, 194.
[5] I, 175-6.

> And to be commanded we do consent, when that society whereof we are part hath at any time before consented, without revoking the same after by the like universal agreement. Wherefore as any man's dead past is good as long as he himself continueth; so the act of a public society of men done five hundred years sithence standeth as theirs who presently are of the same societies, because corporations are immortal; we were then alive in our predecessors, and they in their successors do still live.[1]

The phrase we quoted earlier takes on new importance in Hooker's system: "There are few things known to be good, till such time as they grow to be ancient."[2] Of course, Hooker concedes that certain human laws will, from time to time, need to be altered and even abrogated in order to adjust the past to the present.[3] But notice the logic at work: if the law *has not been changed*, there must be an important enough reason to make the reformation of laws a precarious enterprise at best:

> But true withal it is, that alteration, though it be from worse to better, hath in it inconveniences, and those weighty;...When we abrogate a law as being ill made, the whole cause for which it was made still remaining, *do we not herein revoke our very own deed, and upbraid ourselves with folly*, yea, all that were makers of it with oversight and with

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[1] I, 195.

[2] II, 29.

[3] For example, see I, 422.

> error? Further, if it be a law which the custom and continual practice of many ages or years hath confirmed in the minds of men, to alter it must needs be troublesome and scandalous...What have we to induce men unto the willing obedience and observation of laws, but the weight of so many men's judgment as have with deliberate advice assented thereunto; the weight of that long experience, which the world hath had thereof with consent and good liking? So that to change any such law must needs with the common sort impair and weaken the force of those grounds, whereby all laws are made effectual.[1]

So unitary, so consistent and self-contained is Hooker's view of society that in this passage he fails to distinguish between ancestors and contemporaries. Past consent is present consent. When old laws are altered, present decisions are changed, and vice-versa. Such is the astonishing consistence with which Hooker argues his case. Laws that are "apparently good" are "things copied out of the very tables of that high everlasting law."[2] "Not as if men did behold that book and accordingly frame their laws; but because it worketh in them, because it discovereth and (as it were) readeth itself to the world by them, when the laws which they make are righteous." Good, established laws, then, as now, order society because the all-pervasive law of reason is one: commands emerge from the given structure and relate that structure to the present.

Just because of the unity of order, contemporary universal consent represented in parliament will not differ in any fundamental way from the law of reason. "The parliament of England," says Hooker, "is that whereupon the very essence of all government within this kingdom doth depend; it is even the body of the whole realm; it consisteth of the king, and of all that within the land are subject to him: for they all are there present, either in person or by such as they voluntarily have derived their very personal right unto."[1] Its assent is no less binding than if we ourselves "had done it in person."[2] The universal law of reason, which is historically expressed in this "perpetual voice of men" (voice of tradition), is also expressed in the "general voice of men" in Parliament. They are, of course, the same voice, both reflecting the same rational or natural law. As Hooker says, the laws that Parliament makes "do take originally their essence for the power of the whole realm and the church of England, than which nothing can be more consonant unto the law of nature and the will of our Lord Jesus Christ."[3] Any suggestion of conflict between the traditional law and Parliament would make no sense to Hooker. For that reason, we find neither a doctrine of the "supremacy of Parliament" nor a doctrine of "judicial review." He would have fully endorsed the remark of St. Germain in the Doctor and Student: "It cannot be thought that a Statute that is made by Authority of the whole Realm, as well of the King and of the Lords Spiritual and Temporal, as of all the Commons, will recite a thing against the Truth." But his agreement would have stemmed from the basic assumption that tradition and consent are inseparable. For him, as for most legal and political thinkers of the Elizabethan era, Parliament was understood not as a legislature primarily, but as a law court; Hooker even refers to it as the "High court of Parliament."[1] Haskins' description of the mentality of the times would, therefore, apply equally to Hooker: "the early idea that statutes were affirmations of existing law persisted long after that theory no longer described the facts."[2] Such was the unity of order: the action of the present is the action of the past.

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[1] I, 422, italics supplied.
[2] I, 225.

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[1] III,408, 9.
[2] I, 194.
[3] III, 412.
[4] III, 407.

Furthermore, as no basic distinction within the perpetual voice (between past and present) can be tolerated, neither can any basic distinction nor opposition within the general voice. Every individual or individual socialunit inside the wider society must conform to the "public power" and the public law. "Because except our own private and but probable resolutions be by the law of public determinations overruled, we take away all possibility of sociable life in the world."[3] Such conformity is demanded by the nature of social existence. Therefore, according to Hooker, the Puritans introduce a fully divisive and anti-social element. The notion that the church is a new community made up of free-willing members can lead to nothing but anarchy. It It would throw into turmoil the whole neatly ordered legal universe.

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[1] III, 407.

[2] Haskins, Representative Government, 100. We shall have occasion to expand the importance of this assumed unity between law and consent when we come to EdwardCoke. I am not at all convinced by Mosse's intimation that Hooker's view in general strengthened the hand of a "supreme Parliament" in the "struggle for sovereignty." It could just as easily be argued that he strengthened the lawyers' hand, in favor of 'judicial review' (as MacIlwain argues). However, neither should be argued. Hooker's logic of order made no room for such distinctions--indeed, when the tensions between executive, legislature and judiciary emerged, it placed a great strain on the monistic or unitary interpretation of social life at work here. (See IV).

[3] I, 228.

"By following the law of private reason, where the law of public should take place, they breed disturbance."[1] God is a God of peace and quietness, of unity and harmony, not of contention and dispute.[2] His order is duly established in perpetuity and in universality. Anyone who contends against that order, or in any way disputes with it is, by definition, a public enemy and one by whose message "the world...should be clean turned upside down."[3]

Lastly, the place Hooker assigns to the King with respect to the rule of law and social consent illustrates his unitary logic. Hooker is convinced that, aside from those nations ruled by conquest, every independent society originally "hath full dominion over itself" to determine the kind of polity it will live by.[4] There is no necessity that a monarchy be designated, but once it has been appointed by the consensual decision of the society, as, for example, in England, the law and God establish and recognize that monarchy.[5] "Every supreme governor doth personally take...his power by way of gift, bestowed of their own free accord upon him at the time of his entrance into his said place of sovereign government."[6] He is, therefore, always in "subordination" and "subjection" to the good of the whole body of which he is the designated head. "Original influence of power from the body into the king, is cause of the king's dependency in power upon the body."[7]

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[1] I, 229.
[2] I, 122.
[3] I, 132.
[4] III, 343-4.
[5] III, 346.
[6] III, 349.
[7] *Loc.cit.*

What is important here is the term "original." The king *was* decided upon, he *was* established by common consent, and, as a result, the system of political authority which he represents is to be maintained. In direct opposition to the democratic tendencies of the *Vindiciae contra Tyrannos*, Hooker argues that rulers ought by no means to be successively elected. Views that advocate such a thing are "strange, untrue, and unnatural...set abroad by seedsmen of rebellion." "...Unless we will openly proclaim defiance unto all law, equity, and reason, we must...acknowledge, that in kingdome hereditary birth giveth right unto sovereign dominion."[1] With regard to something so decisive as the political organization of a society, that which was the product of the general voice of the nation remains in force for the present and the future.

Because Hooker consistently assumes the identity of established consent with the universal law, his notion of the dependency of the crown upon the whole realm is another way of saying "Lex facit regem."[2] Not what the general voice *does* decide (the emphasis of the *Vindiciae*), but what it *has decided*, regarding political authority, is binding and lawful. This view of Hooker's is significant not, as is usually emphasized, simply because it advocates the sovereignty of the law above the king, but also, and in a more positive sense, because it establishes a king on the basis of *past consent* and, on the same basis, defines his power as completely in accord with the law of reason. This positive power of the king, for example, is extremely important in

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1. *Loc.cit.*
2. III, 353.

relation to ecclesiastical affairs. His command is supreme over the action of the church, as we have already seen, as a consequence of the lawful power invested in him by the ancient organization of the commonwealth. In terms of the logic of order, the intrinsic relationship between the capacity to command and the old order is striking. The king, although limited, is hardly a figure-head in Hooker's thinking. He plays his very crucial part in the perfectly rational, balanced and harmonious structure of authority of English society. Accordingly, Hooker can agree that "the prince is always presumed to do that with reason, which is not against reason being done, although no reason of his deed be expressed."[1]

In this light, his use of Bracton's famous axiom: "Rex non debet esse sub homine, sed sub Deo et lege," takes on a slightly deeper significance than is often attributed to it. "The best limited power is the best...the best, that which in dealing is tied unto the soundest, perfectest, and most indifferent rule; which rule is the law; I mean not only the law of nature and of God, but every national or municipal law consonant thereunto. Happier that people whose law is their king in the greatest things, than that whose king is himself their law."[2] The past common consent by which the king was established is, it now appears, identical with the "rule of law." His subordination to the whole realm is at the same time his subordination to law. In other words, it is not the willing act of consent on the part of the realm that was in itself determinative of a

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1. III, 251.
2. III, 352.

monarchical society--the king ought not to rule *under* *men*. It was, rather, that that ancient 'contract' *reflected* or *conformed* *to* the preestablished rational or natural order of law.[1] That is why all subsequent generations of the same society do not redetermine social order by their act of consenting, but rather declare, reaffirm and

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[1] One might, with equal validity, say, "the preestablished rational or natural order of law reflects or conforms to the ancient 'contract.'" The whole point of our argument is this very interchangeability: the law is determined by the realm, and the realm was determined by the law. Here, in essence, we have the crucial identification of the command and structural dimensions of 'order.' The way in which the realm is (has been) structured is the way in which the realm ought to be structured. 'Realm' is, of course, simply another word for 'structure' in our sense. Thus, to put the pattern of Hooker's thought in still another way, the very formation of the realm becomes the 'right' prescription for its formation; circularly, however the realm set itself up, it ought to have set itself up. There is the simple assumption (to be understood, we are arguing, only through some such analysis as ours) that what was contracted is 'rational' or 'natural' and what is 'rational' or 'natural' was contracted. Just as what ought to be for succeeding generations emerges from what already is, so what ought to be for the 'ancient realm' proceeded from the actual manner of its constitution. One is reminded here of Hooker's statement: "...all things that are are good." (I, 164)

It may be suggested that this emphasis upon the arbitrary determinations of the 'ancient realm' reveals an element of 'voluntarism.' We would point out, however, that the act of deciding, of electing in itself--as the primary and continuing basis for true order--receives no attention from Hooker. What is central is what *has* *been* *decided*, and what is, therefore given. As we have seen, Hooker rejects elections as the basis for political order. Social status and function are ascribed. The patterns of social life are predetermined. In other words, there is, literally, nothing for *the* *citizen* *to* *choose* *between*. In the Calvinist-Puritan system a man was *chosen* *out* of an 'old order' *into* a 'new' one in order that he himself might *choose* obedience. To a certain extent, therefore, a context of social action was institutionalized which was set over against the ascribed and prescribed patterns of the 'given' society. In such a system the voluntary determination of the 'new order' is important. In Hooker there is no such alternative context. The citizen simply conforms to what is; he does not reform anything.

and reassert that which has been established.

The old order prescribed not alone the action of the king, but also the patterns of action of the entire society. What is above all needed is conformity and obedience to what is, not the determination of something new. We repeat the lines from Hooker's dedication: "For surely I cannot find any great cause of just complaint, that good laws have so much been wanting unto us, as we to them."

Hooker's conception of a legal universe is, finally, emphasized by the importance he gives to the lawyers of the realm. "Easier a great deal it is for men by law to be taught what they ought to do, than instructed how to judge as they should do of law: the one being a thing which belongeth generally unto all, the other such as none but the wiser and more judicious sort can perform. Yea, the wisest are always touching this point the readiest to acknowledge, that soundly to judge of a law is the weightiest thing which any man can take upon him."[1] ",..Are we not," Hooker continues, "bold to rely and build upon the judgment of such as are famous for their skill in the laws of this land. In matter of state the weight many times of one man's authority is thought reason sufficient, even to sway over whole nations."[2]

"Laws are matters of principal consequence," and therefore the "wiser and more judicious" legal experts who are trained and educated in the law occupy a central (if not the central) position in the determination of action. Certainly, it is no accident that in a system where law, including "very national or municipal law," is uppermost,

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1. I, 225.
2. I, 265; cf. I, 193; II, 36.

that lawyers should be so highly regarded. Nor is it an accident that the logic of order at work in this entire system should find such striking elaboration in the thought of the leading lawyer of the time, Sir Edward Coke.

Chapter IV: SIR EDWARD COKE AND THE CONFLICT IN LAW AND ORDER

> Perhaps we should hardly believe if we were told for the first time that in the reign of James I a man who was the contemporary of Shakespeare and Bacon, a very able man too and a learned, who left his mark deep in English history, said, not by way of paradox but in sober ernest, said repeatedly and advisedly, that a certain thoroughly medieval book written in decadent colonial French was 'the most perfect and absolute work that ever was written in any human science.' Yet this was what Sir Edward Coke said of a small treatise written by Sir Thomas Littleton, who, though he did not die until 1481, was assuredly no child of the Renaissance...
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> A lecturer worthy of that theme would--I am sure of it--be able to convince you that there is some human interest, and especially an interest for English-speaking mankind, in a question which Coke's words suggest: --How was it and why was it, that in an age when old creeds of many kinds were crumbling, and all knowledge was being transfigured, in an age which had revolted against its predecessor, and was conscious of the revolt, one body of doctrine and a body which concerns us all remained so intact that Coke could formulate this prodigious sentence and challenge the whole world to contradict it.
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> F. W. Maitland, "English Law and the Renaissance."

> Coke could cook law books.
> But he couldn't cook by the books.
> He could only cook books for Cokes.
>
> An anonymous contemporary rhyme.

On the surface, an "unpleasant, grasping, arrogant" and very much down-to-earth lawyer like Edward Coke would appear to have little in common with the pious and lofty concerns of a Calvin, a Perkins or a Hooker. His thoughts from first to last moved exclusively in the grooves of the common law, of seisin, tenure, rent, debt, and the whole range of minutiae that made up the legal system of his day.

He had little time for theological or philosophical speculation.[1] Yet, with all that, he was an Elizabethan, and the tensions and strains of Elizabethan society disturbed his soul profoundly. In fact, from the point of view of social analysis, Coke is an intriguing character just because he embodied intricately and subtly the conflicts of his time,[2] conflicts, as we have seen, that had an unavoidable theological dimension to them. His unconscious attempt both to do justice to these contradictions and to harmonize them in categories most remarkably congruent with the theological motifs we have described, calls to mind Professor Hill's dictum: it is time, he says, "to take legal history out of the hands of lawyers, as religious history has been taken away from the theologians, and to relate them both to social development."[3]

In the present study Coke is a natural focus for our attention. He was by no means simply a lawyer among lawyers, nor was he but another important jurist in the history of English law. "When I consider all the judges England has had," says S. E. Thorne, "I can think of no other whose absence would have had more serious effects on the course of English law than that of Edward Coke."[1] What is more, anyone familiar with the development of common law will know that the name "Coke" bespoke a well-nigh absolute authority for future generations.[2] For good or ill, he laid the tracks on which the engine of the law would run for some time to come. Even in his own day, his name was beginning to be considered synonymous with the law.[3]

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[1] That is not to say Coke was irreligious. He was, as we mentioned above, a good Anglican all his life, and not infrequently the expression of his religious position appears in his writings, as we shall see. However, he was certainly no theologian. All the more interesting, therefore, to find the striking similarities between elements in his thought and the religious systems we have discussed so far.

[2] S. E. Thorne, "Edward Coke," 6, emphasizes the transitional period in which Coke stood: "If the Englishman's mind and world had been, twenty-five years before Coke was born, still more than half medieval, in 1634, when he died they were more than half modern."

[3] In "Recent Interpretations of the Civil War," Puritanism and Revolution, 28.

Coke was born in 1552. He was educated at Trinity College, Cambridge, during the time that Cambridge was becoming a center of Puritan-Anglican collisions, and then at the Inner Temple.[4] Ever since their probable origin in the 14th century, the Inns of Court had fostered a narrow, one-track legal education, an education that was greatly responsible at once for the insulation of the common law from the Reception of the Roman system,[5] and for producing a profession which Erasmus called "the most unlearned sort of learned men."[6] The

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[1] Thorne, *op.cit.*, 17-18

[2] W. S. Holdsworth, *History of English Law*, V, 459: Succeeding generations of lawyers relied heavily upon Coke, thinking that "his authority upon all questions of legal history was as conclusive as his authority upon questions of medieval or 16th-century law."

[3] In D. O. Wagner's essay, "Coke and the Rise of Economic Liberalism," *op.cit.*, to which we are much indebted in this chapter, he writes: "when 'Coke' is spoken of hereafter, not Coke the individual but Coke the mouthpiece of many lawyers--including himself--is ordinarily to be understood." So shall we understand him in this chapter.

[4] On a map of historical sites in the Inner Temple, it is related that Coke occupied quarters in Mitre Court in 1572.

[5] This is a favorite point of F. W. Maitland's. See, for example, his "English Law and the Renaissance." *Historical Essays*, ed. H.M. Cam (Cambridge, 1957), 145.

[6] Ogilvie says in *King's Government and the Common Law*, 14; "Why were judges and lawyers content for hundreds of years to allow civil justice to writhe and twist in the shackles of the medieaval land law? It seems that the reason is to be found in the habit of

Honourable Society of the Inner Temple could well be proud of Edward Coke, for as a single-minded lawyer with a "fanatical reverence for the common law," he had no equal.[1] In 1578 he was called to the Bar, and very soon thereafter he had a thriving legal practice,[2] thriving enough to attract Lord Burghley's coveted attention. He subsequently became Solicitor-General in 1592, Attorney-General in 1594, Chief Justice of the Common Pleas in 1606, and, finally, in 1613, Chief Justice of the King's Bench. He retained this exalted position until his abrupt dismissal in 1616 at the hands of his arch antagonist,

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mind induced by their education." While that is undoubtedly true, it may still be asked, what contributed to and reenforced such an educational policy. As we shall see, there are important intellectual factors that help to perpetuate this orientation to the past.

[1] W. S. Holdsworth, "Elizabethan Age in English Legal History and its Results," Iowa Law Review. XII, 4 (1927), 321-335, at 332.

[2] Of course, insofar as his legal practice was economically prosperous, Coke was by no means alone. Whether or not one may generalize about the "gentry" in the period before the English Revolution, and whether or not one may include the lawyers as part of the "rising gentry," it is quite clear that the lawyers as a profession were busy making fortunes for themselves. In "Rise of the Gentry, 1558-1640," R. H. Tawney states that the lawyers' "profession" had taught them what, properly handled, land could be made to yield; naturally, they used their knowledge. Popham, who speculated heavily in Crown lands; Ellsemere, who left his son 12,000 pounds a year; the odious, but indispensable Coke, were all substantial landowners; the last, indeed, with his fifty odd manors, was well up in the first flight." (18) By 1601, Coke was already wealthy enough to entertain Queen Elizabeth and present here with 1000 pounds! (See Holdsworth, History of English Law, V, 425.) And Thorne points out that Coke was "an astute business man interested in trading ventures," particularly in the Virginia Company (op.cit., 5). I have no doubt that as we come, later on, to discuss Coke's sentiment in favor of free trade and economic liberalism, this information ought to be borne in mind in order to understand why it was, in Rowse's words (op.cit.,366), that,"the Common Law suited the economic and social needs of the middle elements of society" so nicely. The only question is whether these "economic motives" (or Realfaktoren, as Weber would call them) are the only source of the radical and widespread reorientation of social values which England was experiencing during the life of Coke.

King James I.

His dismissal, however, by no means ended his career. In 1621 he carried on his defense of the common law in Parliament, and his activity on behalf of the Petition of Right of 1628 has rightly won him the reputation of defender of the 'liberty of the subject.'[1] It was through the influence of that activity, claims Holdsworth, that the supremacy of Parliament and the common law became basic principles of the English Constitution, and the "old standing alliance" between them was cemented.[2] Certainly, through his identity with the triumphant parliamentarians, Coke established his own significance in the history of English law.[3]

Perhaps it is because Coke's writing is so unsystematic and his interests, at least ostensibly, were so fastened on the specificities of the law, that there has been surprisingly little attempt to pull together his central frame of thought and relate it to the intellectual currents of the time. Coke is usually treated as he wrote: disjointedly. Occasionally, brief references are made to the importance of the affinity between, say, Coke and Hooker, but they are either undeveloped,[4] or they simply misunderstand the nature of the affinity.[1] There would appear to be an especially urgent need, in the case of so significant a figure as Coke, to wrench the law out of the hands of lawyers and set it in its wider context.

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[1] As Professor Hill has rightly pointed out in his brilliant essay "The Norman Yoke," op.cit., 'liberty of the subject' meant for Coke the rights of the propertied. In this, of course, Coke was at one with the Independents. It may be questioned, however, whether Coke was always quite so static at this point as Hill implies. Despite Coke's conscious inclinations, the logic of much of what he says pushes beyond an exclusive identification of rights and property.

[2] Holdsworth, "Elizabethan Age," 331 C. , [illegible].

[3] Ibid., 334.

[4] For example, J. S. Marshall, "Richard Hooker and the Origins of American Constitutionalism," 55-58.

The conclusions we have reached with respect to Hooker's thought suggest a useful means for crystallizing Coke's 'theory of law', and for relating it to the divergent logics of order which we have considered so far. When these conclusions are the starting-point, it becomes clear how accurate are Professor Sabine's words: Coke's "fundamental beliefs were extraordinarily like those of...Hooker."[2] In organizing our argument, we shall deal, first, with the general aspects of Coke's theory, and, second, with the relation of the theory to his specific legal activity.

I

For Coke, as for Hooker, the law, or more precisely, the common law, is the expression of the ultimate order of things: its total self-consistence and inner harmony bespeak the coherence and continuity of social life itself. The commands or imperatives of the law arise harmoniously from the past and refer back to it again in a system of perfect, circular unity. In words that call Hooker to mind in a striking way, Coke describes this perfect unity and the divine source from which it comes:

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[1] For example, Sabine, op.cit., 383-6. Sabine incorrectly sees Coke as holding a notion of supremacy of common law above Parliament, and, in this, as agreeing generally with Hooker. Precisely because of the complexity and subtlety of the logic of order which Coke shares with Hooker, he has no very consistent or clear-cut attitude toward Parliament, as we shall see. Eusden's analysis (op.cit., 142-44) of the relation between Hooker and the lawyers is still more curious. Without offering any documentation, he finds the lawyers opposed to Hooker because his monarchist tendencies were too strong. I find no grounds for such an argument. In many passages (see below) Coke, like other lawyers, speaks like a strong monarchist. In others he calls the king's authority radically into question. In his ambiguous position, he stands squarely with Hooker.

[2] Sabine, op.cit., 384-85.

> To the end that all the Judges and Justices in all the several parts of the realm, might, as it were, with one mouth in all men's cases pronounce *one and the same sentence*; whose learned works are extant, and digested into nine volumes, wherein if you observe *the unity and consent of so many several Judges and courts in so many successions of ages, and the coherence and concordance of such infinite, several, and diverse cases,* (one, as it were with sweet consent and amity, proving and approving another) it may be questioned whether the matter be worthy of greater admiration or commendation: for as in nature we see the infinite distinction of things proceed from some unity, as many flowers from one root, many rivers from one fountain, many arteries in the body of man from one heart...: so without question *Lex orta cum (ex) mente divina, and this admirable unity and consent in such diversity of things, proceeds only from God the fountain and founder of all good laws and constitutions*. [1]

According to Coke, "this admirable unity and consent" are founded in what he variously calls "fundamental law," "rule of common law," or "common right," that is, in the sum and substance of the ancient law of the realm.

> For any fundamental point of the ancient common law and custome of the realm, it is a maxim in policy, and a trial by experience, that the alteration of any of them is most dangerous; for that which hath been refined and perfected by all the wisest men in

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[1] *Coke's Reports*, preface to volume II, ii-iii. Cf. 3 *CR*, preface. *The Reports of Sir Edward Coke in English in Thirteen Parts Compleat*...7 vols. The Savoy (London, 1738). (Henceforth referred to as *CR*.) Italics supplied.

> former succession of ages, and proved and approved by continual experience to be good and profitable for the commonwealth, cannot without great hazard and danger be altered or changed.[1]
>
> It is not almost credible to foresee, when any maxime, or fundamentall law of this realm is altered...what dangerouse inconveniences doe follow...[2]

Above all else, the common law is a given or predetermined legal system. What was decided in the past sets the mold for the law of today. *What was adjudged reasonable determines what is reasonable.*[3] It is in antiquity that the key to the present lies, and it is those who have immersed themselves in the old order, who are reliable 'judges' of contemporary action. "Quae contra rationem juris introducta sunt non debent trahi in consequentiam," as Coke said.

Any basic inconsistencies or contradictions in the law are, by the logic of Coke's thought, ruled out.

> If you observe any diversities of opinions amongst the professors of the laws, content you (as it behooveth) to be learned in your profession, and you shall find, that it is *hominis vitium non professionis*. And to say the truth, the greatest questions arise not upon any of the rules of the Common Law but sometimes upon conveyances and instruments made by men unlearned;...In all my time, I have not known two questions made of the right of discents, of escheats by the common law, etc. so certain and sure the rules thereof be: happy were arts, if their professors would contend, and have a conscience to be learned in them, and if none but the learned would take upon them to give judgment of them.[4]

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[1] 4 *CR*, preface, v, vi.

[2] IV *Institutes*, 41, Coke's *Institutes of the Lawes of England* are divided into four parts. I (*Coke on Littleton*), London, 1629; II, London, 1662; III andIV, London, 1648.

[3] It will be observed how close this logic is to Hooker's thought.

[4] 2 *CR*, preface, x-xiii.

The objective system is trustworthy, as is the judge who is properly trained or who knows the law. Interpretation is a matter only for "the wiser and more judicious sort," as Hooker said. They alone possess the requisit "judicial" or "legal reason,"[1] because they alone have been carefully brought up in the traditions and customs established "time out of mind" before the occupations of the "Romans, Saxons, Danes, or Normans."[2] He alone is reasonable who is thoroughly grounded in the "absolute perfection of reason." The unlearned and therefore irrational man is responsible for incoherences.

Indeed, the law for Coke is more than the measure of reason. It is, it would seem, the measure and source of virtue as well. As Gooch has reminded us, "the law of England was a religion" and the lawyers of the realm the high priests.[3] The law had a numinous quality, just as it had for Hooker. Coke's advice to young lawyers sounds decidedly sacerdotal:

> For thy comfort and encouragement, cast thine eye upon the sages of the law, that have been before thee, and never shalt thou find any that hath excelled in the knowledge of these laws, but hath sucked from the breast of that divine knowledge,

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[1] In elaboration of this point, says Coke: "And by reasoning and debating of grave learned men the darkness of ignorance is expelled, and by the light of legall Reason the Right is discerned, and thereupon Judgment given according to Law, which is the perfection of Reason. This is of Littleton here called *legitima ratio*, whereunto no man can attaine but by long studie, often conference, long experience, and continuall observation.

Certaine it is, That in matters of difficultie the more seriously they are debated and argued, the more truly they are resolved, and *thereby new inventions justly avoyded*. *Coke on Littleton* (*I Institutes*), 232 b. Italics supplied.

[2] 2 *CR*, preface, x-xiii.

[3] G.P.Gooch, *Political Thought from Bacon to Halifax* (London,1914), 62-3.

> honesty, gravity, and integrity, and by the goodness of God hath obtained a greater blessing and ornament than any other profession to their family and posterity...for it is an undoubted truth, that the 'just shall flourish like the palm-tree; and spread abroad as the cedars of Libanus.'
>
> Their example and thy profession do require thy imitation: for hitherto I never saw any man of a loose and lawless life, attain to any sound and perfect knowledge of the said laws: and on the other side, I never saw any man of excellent judgment in these laws, but was withall (being taught by such a master) honest, faithful, and virtuous.[1]

It is the orientation to the old order that makes the use of precedent so important in Coke's system. His nine volumes of systematic case reports, which attempt to verify court decisions by reference to an infinite number of previous and often antiquated decisions and statutes, are certainly the leading example of the introduction of "precedent" as a central and binding legal category.[2] Although the term is used in England as early as the 12th century in the *Dialogus de Scaccario*, it meant the application of rational *principles* to the law.[3] At no time, until the 16th century, did precedent signify that a previous *judicial decision* should have authority for deciding a later case. During the 13th century, Bracton assiduously recorded digests of hundreds of cases, but, as Professor Berman points out, these cases "were not binding authorities but merely illustrations of legal principles."[1] From the 14th to the 16th centuries, the famous Yearbooks were compiled, but still the legal arguments they set down "were not treated as authorities in any sense."[2] Thus, the breakthrough of precedent as a leading principle of legal interpretation, in large measure due to the influence of Coke, betokens in the strictly judicial sphere what we characterized in Chapter III as a discovery of the old order in post-Reformation England generally, and in official Anglican theology particularly.

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[1] 2 *CR*, preface, x-xiii.

[2] Ogilvie, *op.cit.*, 17, says: "Precedents did not "become absolutely binding until the sixteenth century, when decisions began to be reported instead of arguments." Cf. Harold J. Berman, *Nature and Functions of Law*. (Brooklyn, 1958), 372-73.

[3] Ogilvie, *op.cit.*, 17. The author of the *Dialogus* remarks that "there are cases where the causes of events, and the reasons for decisions are obscure; and in these it is enough to cite precedents, particularly those derived from men of sense, whose actions are cautious, and *founded on* reason." (Italics supplied.)

There is unquestionably in Coke an intensification of what we have called a *logic of conformation*; his thought from first to last exudes a prejudice against the new. "And the wisdome of the Judges and Sages of the Law have alwayes suppressed new and subtile inventions in derogation of the Common Law;...*it is better to be turned to a default, than the Law should be changed, or any innovation made*."[3] In utilizing the "old lawes" the lawyer must possess three capacities: the thorough knowledge of them, the "art to dispose them," and "the diligence to omit none of them."[4] *All* the ancient legal customes and traditions are to be used in unearthing helpful precedents. And the unearthing of precedents is nothing else than Coke's attempt to squeeze the present into what he thinks is the past.

The creative role played by Coke in reflecting and contributing to the appeal to precedent in the legal thinking of his day is incontestable. It was no mean achievement to make the kind of historical judgments he did about the nature of the "ancient realm." "Despite his intense concern with history, this most unhistorically-minded of men was no scholar..."[1] He accepted the legends about the pre-Conquest "golden age" with naive credulity, being satisfied, for example, that the Modus Tenendi Parliamentum dated from the Conquest and reliably described the method of holding Parliament in Saxon times![2] Actually, of course, it was an extremely fanciful document written in the 14th century.[3] He was also of the opinion that the highly imaginative Mirror of Justices was an accurate account of Anglo-Saxon law and institutions.[4] Furthermore, it is quite clear that many of the innumerable Latin maxims Coke used to lend antiquity and authenticity to his decisions "attained their classical form in (his) writings."[5] As Hobbes polemically remarked, with justification:

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[1] Berman, *op.cit.*, 372.
[2] *Loc.cit.*
[3] *Coke on Littleton*, 282.
[4] 4 *CR*, preface, v, vi.

> He endeavours by inserting Latin sentences, both in his text and in the margin, as if they were principles of the law of reason, without any authority of ancient lawyers, or any certainty of reason in themselves, to make men believe that they are the very grounds of the law of England.[6]

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1. Thorne, op.cit., 13.
2. 9 CR, preface, iv.
3. See Hill, op.cit., 58-59.
4. As Holdsworth points out in his Some Makers of English Law (Cambridge, 1938), 39: the Mirror was nothing more than a "legal romance." It was written by a lawyer in the 13th century as an attempt to construct an "ideal system of law, out of the shifting legal panorama of his day, by going back to Biblical first principles, and letting his fancy play upon the mixture of the archaic, the feudal, the Romanist, the royalist, and the constitutional tendencies" of his time. Cf. Ogilvie, op.cit., 162. Coke mentions the Mirror at 9 CR, pref. iv, and at II Institutes, 230.
5. Holdsworth, History of English Law, 458.
6. Quoted by Holdsworth, loc.cit.; from Hobbes' Dialogue of Common Law, Works, vi, 62.

While the point is not that Coke cut his views out of whole cloth,[1] or that he was alone responsible for the backward trend,[2] he reflects an intensity of devotion and deference to the past that clearly marks a new period in the development of the common law. By referring to Coke as the leading exponent of a return to the old order, and by emphasizing the patent innovation and self-deception inherent in such a program, we seek to call attention to a logic of order whose persuasiveness and influence cannot be explained because of its accordance with the facts. Nor can its 'logic' be explained with reference to the structure of the way things are (or were), as Coke and Hooker firmly believed. The logic of order at work here is a system of interpretation that derives its coherence not from 'reality', but from the intrinsic connections of its own assumed categories.

With this, we come to the central question of the specific relation of the common law to the other agencies of English government: Parliament, the church, and the crown. The intricate problem of the relation between the fundamental law and Parliament has, of course, been extensively and learnedly debated. Does Coke have a notion of "judicial review" or of uncontrolled "parliamentary sovereignty"? Is he the father of the American or the English conception of law and government?[1] These questions, and the debate in general now appear, on the basis of work done by S. E. Thorne and J. W. Gough, to have been misguided. The very putting of the question in this way, says Gough, "implies a distinction between and a separation of the functions of legislation and jurisdiction which was not clearly drawn till later."[2] Our analysis of Coke brings us to precisely the same conclusion, even though Coke himself was never able completely to resolve the tension between the legislature and the judiciary.

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[1] Certainly Coke did not invent devotion to the past. The concern for legal tradition is to be noted in Fortescue, and, to some extent, even earlier. See Holdsworth, *Makers of English Law*, 46 ff. and M. A. Shepard, "Political and Constitutional Theory of Sir John Fortescue," *Essays in History and Political Theory* (Cambridge, 1936) 290.

[2] See Margaret A. Judson, *Crisis of the Constitution* (New Brunswick, 1949), 153-54 for a description of the breadth of this allegiance to the past--among parliamentarians and royalists alike.

With respect to Coke's view of Parliament, three things bear remembering: it was, for him, as for Tudor and medieval people generally, a court of law; it was 'very ancient', and it was representative of the 'consent of the whole realm.' "Parliament," says Coke, "is the highest, and most honorable and absolute Court o[illegible] Justice of England, consisting of the King, the Lords [illegible] and the Commons..."[3] or, as he remarks elsewhere, "...every member of the parliament hath a judiciall place..."[4] In fact, it was called "parliament" because there every member may speak "judicially his mind."[5] "Of the power and jurisdiction of the parliament, for making of laws in proceeding by bill, it is so transcendent and absolute, as it cannot be confined either for causes or persons within any bounds. Of this court it is truly said: Si antiqui-

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1. J. W. Gough, Fundamental Law in English Constitutional History (Oxford, 1955). See 32 for a summary of the literature on the subject.
2. Ibid., 46.
3. Coke on Littleton, 109a-110.
4. 9 CR, preface, xxvi.
5. IV Institutes, 15.

tatem spectes, est vertustissima, si dignitatem, est honoratissima, si jurisdictionem, est capacissima."[1] The things Coke instances as legislation are definitely not what we have come, in modern times, to think of under that heading. For Coke legislation deals with questions of inheritance, ancestry, whether infants or minors are of 'full age' and so on.[2] A Parliamentary Act is a judicial act.[3]

Secondly, Parliament existed as the highest court of the realm "long before and untill the time of the Conqueror..."[4] As Coke put it above, "Si antiquitatem spectes, est vertustissima..." It was unquestionably part of the legal structure of the old order, and it derived its authority from that fact. Thirdly, a statute is "no Act of Parliament" unless it is the result of consent among the king, the Lords and the Commons,[5] who, in turn, embody the ancient sentiment and consensus of the realm. By this consensus was the English monarchical system and the very common law itself determined:

> ...this your graces realm recognizing no superior under God but only your grace, hath been and is free from subjection to any mans laws, but only to such as have been devised, made and ordained within this realm for the wealth of the same, or to such other, as...the people of this your realm have taken at their free liberty by their own consent to be used amongst them, and have bound themselves by long use and custome to the observance of the same, not as to the observance of the laws of any forain prince, potentate, or prelate, but as to the customed and ancient laws of this realm originally established as

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1. IV Institutes, 36.
2. See Gough, op.cit., 42
3. G. W. Prothero, Constitutional Documents of the Reigns of Elizabeth and James I (Oxford, 1894), 288, 290.
4. Coke on Littleton, 110.
5. II Institutes, 158; IV Insts., 25.

> *laws of the same, by the said sufferance, consents and custome, and none otherwise.*[1]

It will be observed how readily the terms 'consent', 'custome' and 'ancient laws of this realm' are interchanged and virtually identified with one another. The people bind themselves, according to Coke, *both* by consent and by custom, or 'long use' to the laws. In other words, what is customary must have been consented to, and what is consented to must become customary. Such, as with Hooker, is the inseparability of the consent of the realm and the law of the realm. In the circular, unitary way we have come to recognize as the hallmark of the Anglican logic of order, consent emerges from and reenacts or reproduces the old order.

On the basis of this logic Coke significantly remarks: "The surest construction of a statute is by the rule and reason of the common law."[2] And, by extension, his reaffirmation of St.Germain's dictum is of the utmost importance: "it cannot be thought that a statute that is made by the authority of the whole realm as well as of the king, and of the lords spirituall and temporall, as of all the commons, will recite a thing against the truth."[3] Theoretically, at least, such a thing "cannot be thought." Parliament and the courts are, accordingly, complementary and fully harmonious aspects of the same 'ancient' legal system. As Gough astutely comments, "to Coke parliament had the last word not because of its

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1. IV *Institutes*, 342, 43; italics supplied.
2. *Coke on Littleton*, 272 b.
3. IV *Institutes*, 343.

legislative sovereignty, whether acknowledged or unacknowledged, but because as the highest court there was no appeal against its supreme authority."[1]

It is true, of course, that the implicit tensions between judicial and legislative activity caused some inchoate difficulties for Coke's unitary system.[2] He was perfectly ready to recognize that Parliament has the power to make a "new law" in order to "redresse the State of the Church and of the Realme in those things that need amendment";[3] afterall, the past must be related to the present, or in his more graphic words, "out of the old fields must come the new corne."[4] But this was at best a precarious undertaking because very often, as he said, acts of Parliament were "overladen with provisoes and additions, and many times...penned or corrected by men of none or very little judgment in law."[5] The common law judges must ever be vigilant to analyse statutes in the light of the rule and reason of the law. "If there is repugnancy in statute and unreasonableness in custom, the common law disallows and rejects it..."[6] Despite his sublime confidence in the unity of law and consent, Coke is forced, if reluctantly, to admit that Parliament can go astray by passing unreasonably constructed statutes. Such is the background for the famous and oft-quoted passage from *Dr. Bonham's Case*.

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[1] Gough, *op.cit.*, 42-43.
[2] See McIlwain, *High Court of Parliament*, 194 ff.
[3] II *Institutes*, 158.
[4] IV *Institutes*, 109.
[5] 2 *CR*, preface, xii.
[6] Quoted by Thorne, "Dr. Bonham's Case," 550.

> It appears in our books, that in many cases, the common law will control acts of Parliament, and sometimes adjudge them to be utterly void: for when an act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will controul it, and adjudge such act to be void.[1]

Nonetheless, the arguments of Thorne and Gough are completely convincing. They show that Coke had no clear conception of an absolute body of "fundamental law" which stood over against the acts of Parliament (and the consent of the realm that they embody) and which possessed the last word with respect to their validity. Thorne shrewdly demonstrates that in *Bonham's Case*, Coke operates on a notion of strict statutory construction. When contradictions are seen to exist within the statute itself, or when elements in a statute conflict with previous statutory precedents, then, and only then, will the common law "adjudge such act to be void." Furthermore, there was nothing, in the last analysis, to prevent Parliament from enacting such contradictions if it so desired. As he made quite clear in his *Institutes*: "The Common Law hath no controller in any part of it but the High Court of Parliament, and if it be not abrogated or altered by Parliament it remains still."[2] It was devoutly to be hoped that Parliament would not make irrational changes, but when it did, Coke could only weakly and bewilderedly suggest that "those alterations have been found by experience to be...inconvenient for the Commonwealth..."[3] or, in another connection, that acts made against the basic guarantees of the common law "never live long."[1]

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[1] 8 *CR* 118 a.
[2] IV *Institutes*, 42, 3.
[3] Quoted by Gough, *op.cit.*, 41.

The point is that Coke, on the logic of his system,has no *real* answer to any such conflict between the judiciary and the legislature.[2] On the one hand, he stands firmly behind the ultimacy of consent in Parliament. On the other, he dogmatically asserts the supremacy of 'judicial reason', at least as the measure of the true interest or 'convenience' of the realm.[3] For him, as for Hooker, the old order was ever characterized by a sweet mutuality between consent and reason of law. To contemplate a fundamental estrangement between them was to cast doubt on the unity of order. Such a notion was far too perplexing to be entertained. Consequently, Coke's response to the burgeoning conflict was like his response to comparable conflicts set loose in other areas of Elizabethan and Stuart societies. He simply reasserted--though perhaps with less assurance in this field than in the others--the ultimate impossibility of a breakdown in his legal universe. The balanced coherence and continuity embodied in the common law was a reflection of the same coherence and continuity in "so many successions of ages" of English society. Surely, it was plain: anything that contradicted that, even though it be a judgment of the High Court of Parliament, could never live long!

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[1] IV *Institutes*, 31.

[2] Holdsworth, *History of English Law*, V, 475, underlines this conflict, and Coke's inability to deal with it.

[3] In 12 CR, 84 Coke says: "it was good for the weal public, that the Judges of the Common Law should interpret the statutes and Acts of Parliament within this realm: and that (,) if such interpretation ought to be made..."

The relations of common law to the church, and its ecclesiastical courts, and to the crown, present related aspects of the same problem, Coke's understanding of the social place and function of the church concurs completely with the official Anglicanism of Whitgift and Hooker. "In Gods name then," says Coke, "Let us joyne in our prayers, and Sacraments, and performe a due obedience to God, and to our King, as wee are all of one Nation, so let us be all of one Church, and Christ beeing onely our head, let us all desire as in one sheep folde, to be the sanctified members of his glorious bodie."[1] Church and Realm are smoothly coterminous spheres. For this reason, he stands strongly against the 'treasonous' activities of the Catholic recusants in England. He speaks of "Pope Impius" as "his Hellishness" and as "his Horribleness," so antagonistic is he to the insinuation of any "forain precedent" or authority.

Although he barely mentions the Puritans, considering them by far the "least dangerous" among the religious groups outside the Church of England, he roundly attacks the Separatists as "a Sect not to be tolerated in any Monarchyall government."[2]

> And though their ignorance understands not what they doe, yet doe their endeavours strive to shake in sunder the whole frame of our Emperiall government, for if (as they desire) the forme of our Civill Lawes were abrogated, then should our Common Law, and it of necessity fall together. For they are so woven and incorporated in each other, as that without the one, the other cannot stand...

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1. The Lord Coke His Speech and Charge. Given at the Norwich Assisses, 1607. No pagination. (Hereafter referred to as Charge.)
2. Charge.

> ...Without the grave assembly of our reverend Bishops, his Majesties high court of Parliament, should be unfurnished, no law being there enacted, but that which is by the King, his Lord spirituall and temporall confirmed. These therefore that would have no Bishops among us, do in their desires strive, from his highnes, and the dignity of his State, to pluck the right hand of government, and as much as in them lyeth to break in sunder, the golden frame of just Authority for if no Bishops, then no Lawes, if no Lawes, no King; and to this height doth their presumption clime, although their ideot blindnes seems as if they did not understand so much, the mischiefe of their schisme is most unsufferable: For never was their a nation knowne to flourish having a Monarchie in the kingdome, and a Mallachie in the Church.[1]

There is no suggestion in Coke's writings that he ever wished to do away with the ecclesiastical courts or with the Civil Law that had jurisdiction therein. They clearly have their traditional place, and possess a legitimate claim as part of the law of England.[2] In fact, any attempt to reorganize the structure of the church including its courts, would be disastrous to the unity and harmony of the realm.

The only problem, from Coke's point of view, arose from the fact that the church courts did not always seem to realize that they were *part* of the wider common law and by no means independent of it. The boundaries of jurisdiction between the ecclesiastical and common law courts were historically extremely complicated, but it began to occur to Coke that the church courts were overstepping their bounds. They started to claim for themselves, he thought, cases that could only be handled by the common law.[3] Anyway it

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1. *Ibid*.
2. *Coke* *on* *Littleton*, 11; *II Institutes*, 608.
3. See Ogilvie, *op*. *cit*., 129.

was not for them to decide the spheres of jurisdiction. In the famous Fuller's Case,[1] he thundered: "When there is any question concerning what power or jurisdiction belongs to ecclesiastical Judges, in any particular case, the determination of such belongs to the Judges of the common law." The point could not be made much more sharply: the church and its courts were subordinated to the all-encompassing, omnicompetant laws of the realm. It was these laws and none other that defined the structure of relations for the whole society, and therefore its rightful interpreters, the judges, had the final say when those relations needed legal adjustment.[2]

It so happened that in the growing tensions between the church courts and the common law, Archbishop Bancroft had been able to elicit the support of King James, convincing him that the crown, as supreme governor of ecclesiastical affairs, and not the common law courts, had the final power to decide jurisdiction. Consequently, the conflict was broadened to include the question of the king's power and prerogative. Alongside the problem of the relation of the courts and Parliament, the question of the boundaries between judiciary and executive was the most ambiguous political problem of the period under consideration.[3] Although it had long since been held that the King ruled *sub deo et lege*, or within the accepted legal structure as the King-in-Parliament, the particular powers that "are rooted in and spring from (his) political person"[1] had undergone a decided expansion between the reigns of Edward I and Elizabeth. During most of the Middle Ages the king was regarded as little more than "a feudal lord write large."[2] He was, as Maitland said, "every inch a man," and his prerogative powers were but slightly exaggerated feudal privileges and duties. Basic to these was an inherent respect for and defense of inalienable property rights of the freeman of the realm. They constituted the 'liberties of subjects' that were considered absolutely uninfringable by the crown.[3] They were, as McIlwain has said, "a barrier against absolutism."[4]

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[1] 12 *CR*, 41f.

[2] See Eusden, *op.cit.*, 92.

[3] Judson, *op.cit.*, 23ff.

Nonetheless, already by the last quarter of the 13th century, the king was beginning to enhance his power, a fact corresponding to the general collapse of feudalism as a system of governmental organization.[5] Under Edward I Parliament, whose political position was at that time a long way from being carefully defined, was strictly a court of law, consisting essentially of a permanent inner council. The judges and other members of the council were the legal servants, not the advisors, of the crown. They were, as Haskins remarks, "'lions under the throne,' and what they did was done chiefly with the authority of the king's prerogative. 'No peer has the king in the realm,' writes Bracton, and it is literally true." In fact, Haskins continues, "Parliament was simply the efficient vehicle of the king's prerogative."[1]

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[1] Blackstone, Commentaries, I, 231ff.
[2] Holdsworth, op.cit., III, 460.
[3] Paul Birsdall, "Non Obstante, a Study of the Dispensing Power of English Kings," Essays in History and Political Theory, 37-76.
[4] Judson, op.cit., 47.
[5] Haskins, op.cit., 71-74; 45.

The slow but generally consistent process of centralizing royal power after the 13th century, had the effect of extending the prerogative to meet the new and hitherto unknown aspects of post-medieval social, economic and political life, until in the Tudor Age its use was "almost unlimited."[2] It was in the 16th century, according to Holdsworth, that "transcendent qualities" began to attend the king. His powers increased in foreign and domestic affairs, and he enjoyed the exercise of incidental prerogatives, such as making ordinances, awarding letters patent, granting charters, and dispensing statutes pro bono publico, to a degree undreamt of prior to the 16th century.[3]

Coke's own attitude toward the royal prerogative is by no means unambiguous. He is perfectly aware of the King's importance in English government, and his allegiance to the crown throughout his life is unquestionable. As his biographer remarks: for him Elizabeth had been a "true sovereign, fearless, wise; while she lived, her Attorney General remained the open and vigorous champion of majesty and the prerogative."[4] Nor was his reverence restricted to Elizabeth. James and Charles received their enconiums as well.[5] In fact, reports the Journals

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1. Ibid., 71, 73.
2. Maitland, op.cit., 237.
3. Says Holdsworth, op.cit.,III,459:"By virtue of these prerogatives he is personally sovereign, and has the preeminence over all within his realm; he can do no wrong; he can never die; he is the representative of the state in its dealings with foreign nations; he is part of the legislature; the head of the army; the fountain of justice, always present in his courts;the fountain of honour; the arbiter of commerce; the head of the church."
4. Bowen, op.cit., 178.
5. James, said Coke, "is over us all the Lord's anointed, and in these Realms and Dominions, in all causes, and over all Persons, as well

of the House of Lords,[1] "it was a wonder for (Coke) to hear that the liberty of the Subject should be thought incompatible with the Regality of the King." Such was the balance and harmony of English tradition. Within that tradition, the king's legitimate place was not to be questioned, nor his rights doubted.

Still, given Coke's high view of common law, and his assertion that it and nothing else can define the structure of social relations, a conflict with the absolutist tendencies of James was almost inevitable. Particularly so, since the prerogative or chancery courts were actively challenging the authority of the common law to determine jurisdiction and to issue injunctions and prohibitions.[2] With or without historical foundation,[3] that was the kind of threat Coke could simply not abide. So strong was his confidence in the supreme validity of the common law, that he obstinantly held his ground against James. The latter was convinced that, as king, he was both highest judge in the land, and possessed of reason every bit as reliable as the common lawyers, and that therefore he was capable of deciding the law. To these claims Coke responded:

Ecclesiasticall as Civile, next under Jesus Christ our supreame Governour." (*Charge*) Of Charles: to "trust in him is all the confidencee we have under god. He is gods leiuetenant." (Quoted in Judson, *op.cit.*, 17)

[1] Quoted, *ibid.*, 64.

[2] See Ogilvie's treatment of the conflict of the courts; *op.cit.*,118ff.

[3] From an impartial point of view, says Plucknett, *op.cit.*, 54, such a conflict" only revealed the disconcerting fact that the Crown had everything to gain by an appeal to antiquity, and that it was the common law itself, of which the prerogative was a part, which was the source of offense."

> God had allowed His Majesty excellent science and great endowments of nature; but His Majesty was not learned in the laws of his realm of England and causes which concern the life or inheritance or goods of fortunes of his subjects; they are not to be decided by natural reason and judgment of law, which law is an act which requires long study and experience before that a man can attain to the cognizance of it; and that the law was the golden met-wand and measure to try the causes of the subjects, and which protected His Majesty in safety and peace. With which the king was greatly offended, and said that then he should be under the law, which was treason to affirm, as he said. To which I said that Bracton saith *quo Rex non debet esse sub homine sed sub deo et lege*.[1]

Not long after this exchange, James summarily dismissed Coke, and the battle lines were clearly drawn, certainly more clearly than they had ever been before.

Coke's position was unequivocal and unflinching: he laid it down that "the King hath no prerogative but that which the law of the land (the common law) allows him,"[2] and that the King is limited by Parliament and by 'ancient custom.'[3] Further, Coke declared that the "laws of England consist of three parts, the common law, customs, and acts of Parliament..."[4] The prerogative or proclamatory power of the king was conspicuously missing. For Coke the crown was, at bottom, "an hieroglyphic of the law."[5]

Who had the final authority to define the order of English society? Parliamentary consent and legal reason or the crown? That was the fundamental question at issue, and nowhere did it emerge more strikingly than in the decisive area of corporation law.

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[1] 12 *CR*, 65.

[2] Quoted by Ogilvie, *op.cit.*, 139.

[3] *II Institutes*, 60-61

[4] 4 *CR*, iv, preface.

[5] 7 *CR*, 7b. Cf. 9*CR*,123a;"The king cannot by his charter alter the law."

II

The organization of associations of people, their goals and purposes, the functions they fulfill and the way they fulfill them, the rights, privileges and duties they possess, are but the articulation and specification of social life itself. The nature and province of associations, or corporations, in any given society, is a reliable indication of the structure and dynamics of that society. Certainly, nothing focuses more effectively the revolutionary conflicts within the entire English social order around the turn of the 17th century, than the process of determining the legal status of corporate life. We should not be surprised to discover that amid the other conflicts of the time, the 'conflict of order,' which we have traced so far in religious categories, is manifested in social and legal terms as well. Such is the intimate interweaving of religion and society.

No aspect of the growth of prerogative power was more important than its gradual extension into the economic and corporate realms of English life.[1] The absorption of previously sovereign, self-determining municipal and gild corporations by the crown, as well as the subordination of all aspects of economic activity to its power, was in itself a dramatic symbol of the changing character of England between the 13th and the 16th centuries. The history of that period is a story of nationalizing, centralizing, and unifying, by means of a liberal use of letters patent and royal charters. It is, as Laski says, "a steady tale of oppression that we read," until, by the time of Elizabeth, corporations, and especially business corporations, were virtually "organs of the state."[1]

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[1] While economic and business activity was controlled and regulated by various types of corporate life, e.g. gilds, mysteries, etc., corporations as such included far more than simply economic life.For instance, Davis, op.cit., I, VI, classifies gilds in four categories: frith-gilds (associations to stabilize private ownership of land); social-religious gilds; ecclesiastical gilds; and merchant or craft gilds. Nor were even the merchant gilds exclusively oriented towards economic life. Beyond these different forms, municipalities, educational and eleemonsynary institutions, poor houses, hospitals, etc. were understood to be and organized as corporations. As we shall see, one of the important unclarities in the law was over the relation of these wider, non-economic corporations to the 'business corporations.'

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[1] Harold J. Laski, "Early History of the Corporation in England," *Harvard Law Review*, 30 (1916-17), 560-88, 569, and Davis, *op.cit.*, I, 128-9, 202. It is obvious enough that primitive corporate existence in medieval England arose from a complex socio-economic impluse and not from the decree of the crown. There is evidence that the roots of corporate life existed in the townships and boroughs of the 11th and 12th centuries. (Laski, 564-65; Davis, I, 93) These groupings possessed their own by-laws, administration and police, and they usually owned waste land in common. The inhabitants, as they began to act together collectively, gradually came to regard themselves as a specially delimited collectivity. Moreover, in Laski's words, "Land that is somebody's land may soon, and easily, become the land of some body." (564) The significance of centers of common property-holding and of partially independent associations can hardly be exaggerated as factors helping to break up the "hard cake of feudal custom." By 1188, says Laski, certain abstract ideas of corporateness begin to be expressed: such a town as Bristol has an interest and a purpose distinct from the interests of its citizens, and by 1215, Magna Carta "personifies" the city of London, annexing to it specific corporate rights. (566) Increasingly, the town becomes the locus of trading, commerce and handicraft activity, a fact that indicates the enormously important economic change taking place in the later Middle Ages. Agriculture declined as did the whole feudal structure of land-tenure (Davis, I, 101) in favor of the new 'town economy.' These deep-seated and far-reaching economic changes were, accordingly, all bound up with the growth of independent corporate life. As Lipson, *op.cit.*, I, 265, remarks: "...a municipal rather than a national policy constituted the mainspring of economic development. Every town strove with varying degrees of success to become a self-dependent unit with active power of aggression and defence; and the exclusion of strangers, the imposition of tolls, the right of reprisals, the restriction of 'foreign' competition, were all economic weapons in the municipal armoury."

But if there was quite clearly such a 'push from below,' the final step to fully acknowledged corporateness was only to be taken "through the coffers of the king." (Laski, 567) The local courts, It was this direct control and regulation of corporate life that offended Coke. For him the ever growing assertion of prerogative power

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the legislative and administrative independence, the high degree of economic autonomy that the towns had painfully developed, were from the 13th century onward, not adequate to the task of safeguarding them against the encroachments of royal power. "It is," writes Laski, "a steady tale of oppression that we read. The communities of these feeble villages are feeble enough; and they become the easy prey of the king and his lords. That process of conquest and subjection seems steadily to have deprived these groups of what pretensions they had before possessed to corporateness." (569) The methodical transferring of town government to justices of the peace, county authorities and commissions more directly in touch with the desires of the crown emphasizes the "steady tale of oppression." (Davis, I, 123) The indispensable basis for English group-life becomes the concession of the king in the form of royal charters or letters patent. (See C. T. Carr, *General Principles of Law of Corporations*, Cambridge, 1905, 167.)

The same expansion of authority can be marked in the development of corporate economic life. In close connection with the emergence of towns was the growth of the medieval craft gilds or 'mysteries.' The gilds comprised "a complete system of industrial control over all who were associated together in the pursuit of a common calling." (Lipson, I, 328) It was a system that "completely absorbed" and subordinated the individual craftsman to its vast restrictions and conventions. (Lipson, I, 357) In short, gilds were relatively autonomous monopolies of the strictest kind. Although in the early stages of their development, in the 12th century, some gilds received their charters directly from the crown, between the 13th and the 15th centuries they tended to grow into very close relationship with the towns and to become licensed and virtually controlled by the local municipal government. (Lipson, I, 384; Davis, I, 192)

There were, however, two Acts in the 15th century which, if only symptons, were significant signs of the crown's growing interest in economic affairs. Both the Acts of 1437 and 1495 took a stand against certain gilds' claims to special independence. However, the "Act concerning Corporations" of 1504 asserted the right of the central government to "complete industrial control," (J. R. Tanner, *Tudor Constitutional Documents* (Cambridge, 1422, 7)) and thereby marked the beginning of the final stage in the extension of the prerogative over economic and corporate life. "No masters, wardens and fellowships of crafts or mysteries,...nor any rulers of gilds or fraternities (shall) take upon them to make any acts or ordinances by them heretofore made, *in disheritance or diminution of the prerogative of the King*...nor against the common profit of the people..." (Quoted in Tanner, 7; cf. Lipson, I, 420-21 and Davis, I, 196-202)

When Bacon referred to the gilds as "fraternities of evil," he summarized Elizabeth's attitude toward them completely. (Davis, I, 196) in this field spelled the most dangerous kind of innovation and departure from the past. Afterall, it was the common law that ultimately

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The famous Statute of Apprentices of 1563 is nothing other than a nationalizing of gild regulations of restrictions. It is a vast piece of legislation which very nearly wipes out the independent influence of the gilds as a serious threat to the crown. As Unwin points out (*Industrial Organization in the 16th and 17th Centuries*, London, 1957, 139), "the Statute of Apprentices was a remarkable expression of the idea of a national economy." Certainly, by the time of the Tudors, the incorporation of gilds was understood to rest squarely within the province and control of the royal prerogative. (Laski, 586)

Finally, the history of creating monopolistic business companies through letters patent constitutes another version of the 'tale of oppression' at the hands of the English crown. According to the authority in these matters, E. Wyndam Hulme ("History of the Patent System under the Prerogative and at Common Law, "*Law Quarterly Review*, XII, (April, 1898), 141-154 and XIV (1900), 44-56), the earliest instance of originating a business company by means of a royal letter of patent was in 1331. During the rest of the 14th and 15th centuries, these letters were employed by the kings to protect and to control the slowly developing English industries. The right of the king to grant such monopoly privileges for the sake of the common good was clearly established in 40 Ed. III, fol. 17, 18, and the Tudors, especially Elizabeth, greatly expanded the right. Whereas earlier grants and letters patent were in general dispensed to towns and gilds for the royal sanctioning of their local monopolies, the newer patents of Elizabeth had just the opposite effect. They created companies that were more or less national in scope, in industries such as glass, soap, iron and wool, and these naturally broke down the walls of exclusivism. (See W. H. Price, *English Patents of Monopoly*, Boston 1906, for a full treatment of this subject.) Such was, as we have seen, precisely Elizabeth's policy--the letters patent were one of her major weapons. In fact, the grants served her particularly well since they helped to eliminate gild influence and at the same time subject industrial activity directly to her mercantilistic designs. (See Holdsworth, *History of English Law*, IV, 336 ff.) Hulme concludes his study of the patent system with the following important words: "Under the medieval system of patent law the Crown naturally regarded itself as the sole patron and arbiter of the destinies of the new industry introduced under the protection and authority of its letters patent." (151) He goes on to say that, until 1597, when Elizabeth finally conceded that "her grants should be left to the law without the force of her prerogative," the king's charter or letters patent were regarded as absolute and incontestable: "...To this day the phraseology of the patent grant bears witness to the existence of that earlier period when patents were granted without application *ex mero motu et certa scientia* on the part of the determined social relations, not the crown. His attempt to subordinate the prerogative to common law is sharply reflected in many of his decisions in the law of corporations, decisions that in the profoundest way "set the mold"[1] for legal interpretation for many generations to come.

As P. T. Carden has shown,[2] the two definitive decisions that Coke reports, *Prince's Case* and the famous *Sutton's Hospital Case*, reveal in a complementary way Coke's essential view. The former boldly affirms that "A Charter alone cannot cross and change the Common Law."[3] No matter what the royal charter says in founding a corporation, there are transcendent common law rules and principles that finally determine its validity and the scope of its operations. In *Sutton"s Hospital* it was determined (among other things) that there are certain inalienable 'incidents of corporation' defined by the common law and attendant to incorporation, whether the charter lists them or not. The particular question at issue was whether corporate property could be

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Crown--when offenders were liable to penalties in the queen's Court for contempt of this Our Royal Command; and when the power of summary revocation was committed to a quorum of six of the Privy Council, because at that period the right to challenge the validity of the royal grants in the Courts of common law had not been effectively established." (151) On the general question of English corporation law, cf. F. W. Maitland's Introduction to Gierke's *Political Theories of the Middle Age* (Beacon Press, 1958).

[1] Julius Goebel Jr., Introduction to A. B. DuBois' *English Business Company 1720-1800* (New York, 1938), ftnt 3, viii-xi.

[2] Percy T. Carden, "Limitations on the Powers of Common Law Corporations," *Law Quarterly Review*, XXVI (1910), 320-330.

[3] 4 CR, 186.

alienated even though all the stipulations of the charter were not yet executed. As long as the charter had been granted, declared Coke, the corporation exists "in abstracto," even though it may not yet exist "in concreto." Therefore, all the 'incidents' automatically accrue to it. These incidents include the ability to purchase and alien property, to sue and be sued, to constitute survivors who shall continue the corporation, etc.

Coke proceeds to report that even the king's wishes expressed in the charter are of no ultimate avail against these incidents at common law: "to restrain them from aliening or demising but in certain form; that is an ordinance testifying the King's desire, but it is a precept, *and doth not bind in law*." Though Coke says that "none but the King alone can create or make a corporation...", the statement is a bit unclear since at 29b he remarks that a corporation may be lawfully brought into being "*by the Common Law, as the King himself,*" by Parliament, by King's Charter, or by "prescription." He repeats the same authorities in *Coke on Littleton*, 250. The point is that even the exclusive prerogative of the king to create a corporation through charter or letters patent is brought abruptly into doubt by introducing these other authorities, and by tacitly identifying the incorporating activity of the common law with the "king himself."

Coke's assertion regarding the authenticity of corporations founded by "prescription" is of still further interest in this connection. Blackstone later defined such associations in a way quite consistent with Coke's interpretation: they are "those which have existed beyond the memory of man, and therefore are looked upon in law to be well created, such as the City of London and many others."[1] Contrary to the widespread opinion that Coke held a simple, unambiguous notion of *persona ficta*, based on a concessionist conception of corporations, there is the hint here of a "realist" view. Such a view would, of course, grant at least limited reality and independent existence to a corporation on the basis of custom, quite apart from the fiat of the crown.

In any case, when the king charters a corporation, it is done, says Coke, "in the same manner as if all (the 'incidents' determined by common law) had been comprehended in the letters patent themselves." Or, to quote the most famous dictum in *Sutton's Hospital* (one that he recites twice on the same page); "a corporate aggregate of many is invisible, immortal, and *rests only in the intendment* (or process) *and consideration of the law*..." In other words, reading *Prince's Case* and *Sutton's Hospital* together, we infer that a charter may acceptably define the purposes for which a corporation is founded, but that the ultimate arbiter of the validity and scope of the charter is the common law; Carden states: "the common law supplies corporations created by the crown with certain necessary and incidental powers without words in the charter to confer them.."[2] Furthermore, the words of the charter are good so long as they "do not conflict with common law rules; words that do conflict with the common law are but an ordinance, and not binding in law..."[3]

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1. I Comm. 473.
2, Carden, *op.cit.*, 325.
3. *Ibid.*, 326.

The supremacy of statute, custom and precedent over royal prerogative in Coke's understanding, is further illustrated by other cases he reports at corporation law. In the *Dean and Chapter of Norwich Case*,[1] which concerned the legality of a change or a surrendering of corporate existence, he lays it down that "a corporation created by the King's charter, may be altered by accepting a new charter; *but the constitution of a corporation depending on a statute, cannot be changed by their acceptance of a charter from the crown*." In the *Case of Corporations*[2] Coke staunchly supports the right of municipal common councils (and not the wider citizenry) to elect city officials, "...because divers attempts were of late in divers corporations, contrary to the ancient usage (,) to make popular elections..." These ancient elections, which could not, says Coke, have come into being "without common consent," can be assumed to be in force *even though no specific charter can be shown.* "According to this resolution the ancient and continual usages have been in London, Norwich, and other ancient cities and corporations: and God forbid that they should be now innovated or altered; for many and greatiinconveniences will thereupon arise..."

Coke is in the habit of relating the right to special corporate privilege--such as local economic or political control--*not* to the royal charter, but to custom or Parliamentary enactment. Accordingly, in the *City of London Case*[3] Coke concedes the "ancient" right of

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1. 3 *CR*, 73 aff.
2. 4 *CR*, 77b.
3. 8 *CR*, 121b-131b.

London to impose monopolistic controls upon its commercial life:

> ...No person whatsoever, not being free of the city of London, shall by any colour, way, or mean whatsoever, directly or indirectly, by himself or any other, keep any shop or any other place whatsoever, inward or outward, for shew or putting to sale of any wares or merchandizes whatsoever by way of retail, or use of any trade, occupation, mystery of handicraft, for hire, gain, or sale, with in the city of London...[1]

Very significantly, he adds that "*no corporation made within time of memory can have such a privilege, unless it be by act of parliament*." That obviously means that a corporation not resting upon custome or rights of prescription, as those do that were made time out of memory, gains its basic privileges by statute. At the same time, he allows that "the King may erect *guildam mercatoriam*, i. e. a fraternity or society or corporation of merchants, to the end that good order and rule should be by them observed for the increase and advancement of trade and merchandise, and not for the hindrance or diminution of it." However, measured in the light of the rest of this case and of his other opinions and presuppositions, it is clear that such a grant by the king would be subject to the regulation of the common law, statute and custom.

In the *Chamberlain of London's Case*[2] Coke again supports town ordinances made in the restraint of trade, and he sustains an action of debt in favor of the Chamberlain against the defendants who broke the ordinances. In justification of these monopolistic controls, precedents existing "time out of mind" and acts of Parliament receive the greatest weight.

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[1] 8 *CR*, 124b.
[2] 5 *CR*, 62bff.

> It appears by many precedents, that it hath been used within the City of London time out of mind, for those of London to make ordinances and constitutions for the good order and government of the citizens, etc., consonant to law and reason, which they call Acts of Common Council. Also all their customes are confirmed by divers Acts of Parliament, and all such ordinances, constitutions, or by-laws are allowed by the law, which are made for the true and due exception of the laws or statutes of the realm, or for the well government and order of the body incorporate. And all others which are contrary or repugnant to the laws or statutes [illegible] realm are void and of no effect: and as to such ordinances and by-laws, these difficulties were observed; inhabitants of a town without any custom may make ordinances or by-laws for the repair of the church, or a highway, or of any such thing which is for the general good of the public; and in such case the greater part shall bind the whole without any custom. But if it be for their own private profit, as for the well ordering of their common pasture, or the like, there, without a custom they cannot make by-laws, and if there be a custom, then the greater part shall not bind the less, if it be not warranted by custom. For as the custom creates them, so they ought to be warranted (directed) by the custom.[1]

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[1] 5 CR, 63a, italics supplied. This is, obviously, a striking formulation, one that goes to the heart of Coke's attitude on the law of corporations. The basis upon which 'common profit' as opposed to 'private profit' is determined is certainly unclear, for the 'well ordering of their common pasture' would appear to be in the interests of the community. Nonetheless, the fact that 'private profit' may, to Coke's mind, be laid down by custom is a point worth emphasizing. The central exception to the making of by-laws 'for the general good of the public' is a custom. In other words, if the making of a law neglects the 'general good' of the public, there ought to be an 'ancient' (customary) reason for it. Coke does conclude this passage with a reference to the king's charter, and the fact that it may grant the right to make ordinances. But this reference is, as usual, not elaborated, nor is it fitted into the center of the main argument.

The general control and specification of corporate life by the laws, statutes and customs of the realm--to the conspicuous subordination, if not neglect, of royal prerogative--could hardly be more consistently emphasized. Coke underlines his attitude in the *Institutes*: the special rights and privileges of "Towns corporate" are to be respected, but only because they are allowed by Parliament; "*such priviledges could not be granted by Letters Patent*."[1]

However, this method of enclosing group-life within the exclusive jurisdiction of common law is by no means all there is to Coke's view of corporations. There remain some loose ends that do not quite fit into this neat pattern. Indeed, certain elements must be taken into account that raise considerable doubt about the coherence and stability of the view so far exposited. One or two new dimensions in Coke's thought reveal deep conflict, if not confusion, within his understanding of the nature and function of corporate life in England. Such a dimension is hinted at in what is, on the face of it, a baffling conclusion to the *City of London Case*. Coke discusses the "reasonableness" of customary monopoly rights extended to a baker in Northampton county, in order to lend weight to his decision in favor of London's monopoly. However, he then injects a comment that seems to call generally into question the ultimate desirability of special corporate privileges: "There are divers customs which are against common right, and the rule of common law, and yet they are allowed on our books, and *eo potius*, because they have not only the force of a custom, but are also supported and fortified by authority of parliament."

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[1] III *Institutes*, 184-85.

We encounter here the same kind of reasoning that we observed in our treatment of the relation of common law to Parliament: we perceive a conflict that, by all rights, ought not to be present. If statute, custom and 'common right' all form a grand unity of order, how is it that contradictions take place? Yet, quite plainly, here is an instance of custom and Parliament extending special privileges that, it would appear, contradict the "rule of common law." What, then, is this "rule," this "common right" that Coke talks about; and what does it mean for the law of corporations?

In Davenant v. Hurdis[1]--perhaps the first case in which the monopoly privileges of corporations were seriously challenged by the courts--Coke begins to formulate a notion of "common right." The question at issue in this case was whether the Company of Merchant Tailors of London, by appealing to an ancient custom that was confirmed both by Parliament and letters patent, and which enabled them to make ordinances for the supervision and control of trade, had the right to require members to employ only Company cloth-workers. The object, claimed the Company, was "for the better maintenance and relief of the poor (members)." Davenant, who was a member, refused to conform to the ordinance and refused to pay the fine, and he brought suit against the Company. The case was argued by then Attorney-General Coke for the plaintiff, and by Francis Moore for the defendant.

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[1] 41 and 42 Eliz. We are extremely indebted in our analysis of this case to D. O. Wagner's essay, "Common Law and Free Enterprise: An Early Case of Monopoly," Economic History Review, vii, 2.

Coke's preliminary arguments are rather trivial, but his central contention, and the one most determinative of the decision, was that the ordinance created a monoply and thereby limited trade. By it, he argued, the tailors would be subordinated to the interests of the Company cloth-wrokers, and they would be compelled to exist on relief. Such, he said, is "against common right and the nature of a by-law, for a by-law must be made in furtherance of the public good and the better execution of the laws, and not to the prejudice of subjects or for private gain."[1] By-laws that establish monoplies, states Coke on the basis of one Civil Law precedent, "are against common right and void."

Moore agreed that if the ordinance created a monopoly it would be void, but that it could not be so construed. Afterall, said he, it involved only Company members and, at that, only half their cloth. Moore claimed that if this be a monopoly, then all exclusive privileges given to corporations should be void--an implication that was not far from Coke's point of view. However, the judges decided in favor of Davenant "because the by-law is to make monopoly: and prescription of such nature to induce sole trade or traffic to a company or a person, and to exclude all others is against the law." In other words, Davenant v. Hurdis laid it down as the sum and substance of the traditional law of England, that all monopolies were against "common right" and the common good.

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[1] Compare this argument with ftnt. 1, 263. The Company was appealing, afterall, to *custom*, *confirmed by Parliament*. Yet Coke, inconsistent with his line of thought recorded in the *Chamberlain of London Case*, here argues, by implication, that "common right" takes precedence even over custom and Parliament* As we shall see as we go along, when it comes to monopolies, Coke is anything but clear or consistent.

In the light of his careful analysis of this case, Wagner concludes that the type of legal reasoning exhibited strengthens the conviction that in many [illegible] new the courts were outstripping their precedents to the advantage of free enterprise."[1] To justify his position, Coke cites three precedents that prove that ordinances made against the common good are void; however, he by no means shows, as Wagner points out, that the Tailors' ordinance was necessarily against the public good. That assertion involved an attitude toward monopolies hardly embodied in the law. It is appalling to find Coke attempting to establish the far-reaching and supremely important interpretation, that all monopolies are illegal, on the basis of one reference to Roman Law. Coke was the great defender of the old English order. He had solemnly remarked that its laws "have no dependency upon any foreign law whatsoever, no not upon the civil or canon law other than in cases allowed by the common law of England."[2] However, if he was to justify such an interpretation, it was obviously necessary to seek support outside the common law. There simply was no precedent for the court's decision in Davenant v. Hurdis. On the contrary, the whole trend of the law of corporations until the end of the 16th century was nothing else than the law of special privilege favoring particular towns or gilds. From an economic point of view, it is quite unwarranted to leave the word

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1. Ibid., 219.
2. II Institutes, 98.

"monoply" out of a definition of late medieval corporations.

There is obviously a new mentality at work in Davenant v. Hurdis, one that can hardly be explained by referring to the regnant legal tradition of the realm. To be sure, the judges, together with Coke, strove manfully to make the new motifs conform to the old order and the logic of their system. But the motifs do not fit; they drive in a new direction and involve new presuppositions, different from anything hitherto found either in the legal tradition itself, or in the logic of order claiming to represent that tradition. Indeed, they call both the tradition and the system of thought rather radically into question.

Toward the end of the 16th century, there was much Parliamentary agitation against monopolies and the letters patent of the crown. By 1597, in a move with unquestionably revolutionary implications for politics and economics, as well as for law, Elizabeth conceded that all letters patent could be tested in the common law courts. This was a significant surrender of royal prerogative, and one, quite obviously, that harmonized with the objectives of Sir Edward Coke. There was some delay in bringing the cases to common law, and Davenant v. Hurdis was not tried until 1599-1600.

The most famous case in this connection, would not be heard until 1603. It was the so-called "Case of Monopolies," or Darcy v. Allen, probably rightly singled out "for the momentous effect which it produced on modern jurisprudence."[1] "In the whole of legal history," says Gordon, exaggerating considerably, "there is no other deliverance in any tongue which has proved to be so fruitful of results, nor any which has contributed more to the advancement of society in modern times."[1] One need not include all of legal history to indicate the significance of this case. It is quite enough to indicate the radically new understanding of social order which it expresses, one that certainly did have great importance for the development of modern society. The new understanding is an extension and an elaboration of the motifs already sketched in Davenant v. Hurdis.

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[1] J. W. Gordon, Monopolies by Patents. (London, 1897), 193.

The fact that Elizabeth promiscuously granted letters of patent to favorite industrialists is common knowledge. The monopolies that these grants created caused strong reaction amongst the growing business class, due mainly to the open abuses that attended the system. It is the ability of the crown to dispense these royal grants of monopoly that is challenged in Darcy v. Allen. Accordingly, the conflict between the common law and the prerogative is focused in the sharpest possible way. Edward Darcy, a groom in the privy chamber, had received from Elizabeth complete authority over the manufacturing, importing and selling of playing-cards within England for 21 years. Allen, who was apparently a London merchant, infringed the patent, and suit was brought against him. The plaintiff claimed that the Queen had the right to dispense patents with respect to "things of vanity," like playing-cards, for they "were not any merchandize, or thing concerning trade of any necessary use." Allen, on the other hand, pleaded not guilty. He argued that the City of London was an ancient city that had from time immemorial recognized and given special place to the society of Haberdashers. For this reason he claimed he was *civic et liber homo de civitate et societate illa*...

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[1] Ibid., 193.

It is interesting to observe that there exists in this case a potential conflict between the monopoly privileges of a municipal corporation and those of a business company. The conflict is an intriguing one, and there is evidence that the City of London was behind Allen in this suit, testing its own rights through him.[1] A decision with respect to such a problem would have been enormously interesting for the historian of corporation law. However, one of the most important aspects of *Darcy* v. *Allen* is that *neither the defense nor the opinion of the court* displays the slightest interest in the customary privileges of London. That is remarkable, particularly in the case of Coke, who could easily and consistently have argued that custom outweighs prerogative, and, accordingly, have delivered the desired blow against royal prerogative. Such an argument would have coincided completely with his opinions discussed above.

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[1] D. Seaborne Davies, "Further Light on the Case of Monoplies," *Law Quarterly Review*, 48 (1932), 394-414. According to Davies, the sequel to *Darcy* v. *Allen*, *Allen* v. *Garrard* (1605), shows that "Allen was not an independent, unsupported protagonist on behalf of the liberty of the subject to pursue lawful and established trades, but rather a freeman of the City actively instigated to resistance to the monopolist by the most influential authorities of the City of London." (395) Davies shows how widespread was the resistance amongst the city officials to the monopolies granted by Elizabeth, resistance undoubtedly based, like Allen's, upon their ancient, customary rights. That makes all the more striking the line of argument taken by Coke and the other judges. The defense, from the point of view of the supremacy of antiquity over the crown's prerogative, was ready-made.

Despite this fact, the tack of counsel for the defense, Fuller, and of the judges takes an entirely different direction. They have their minds on what they consider profounder issues. Fuller begins his defense with a familiar appeal to the sovereignty of common law over the king, "All Patents," he says, "concerning King and his subjects are to receive exposition and allowance how far they are lawfull and how far not by the Judges of the Law."[1] Furthermore, the judges are not to be guided by the specific letters and words of patent, but "by the Laws of the Realm, the Laws of God, and according to the antient allowance thereof."[2] He goes on to argue that Darcy's patent is contrary to all three authorities mainly because, as he says, restraint of labor is against the law of God and man. "The Ordinance of God is, that every man should live by labour, and that he that will not labour, let him not eat." He develops this line of thought into the central point of his defense:

> Now therefore it is as unlawful to prohibit a man not to live by the labour of his own trade, wherein he was brought up as an apprentice, and was lawfully used, as to prohibite him not to live by labour, which, if it were by act of Parliament it were a void act: for an act of Parliament against the law of God, directly is void, as is expressed in the book of Doctor and Student, much more Letters of Patent against the laws of God are void...But Mr. Darcy will take from men against their wills, their living and lawful trade, and force them to seek other trades, directly contrary to the law of God.[3]

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[1] Gordon, op.cit.,174.

[2] Loc.cit.

[3] This is, of course, Fuller and not Coke speaking. His remark that an act of Parliament is void if against the Law of God is probably more extreme than Coke would make. Yet, the religious tone is very close to what one generally finds in Coke and other judges of the time. The question of freedom of economic activity is no secondary question--it is primary.

This Biblical justification of voluntary labor sets the background for the ultimate decision of the court in favor of Allen. The judges, including Coke, declared Darcy's patent to be "utterly void," in the first place, because it was "a monopoly, and against the common law," and because "all trades...which prevent idleness...are profitable for the commonwealth and therefore the grant...is against the common law, and the benefit and liberty of the subject." In the second place, it was declared void because it was "against divers acts of parliament." Coke concedes the general non obstante power to the king, but he remarks that "when the wisdom of Parliament has made an act to restrain pro bono publico importation," the king may not dispense with it.[1] Such dispensation, says Coke, is "utterly against law."

Coke further argues that there are three 'inseparable incidents' connected with monopolies which contribute to their general "mischief or wickedness." They inevitably raise prices, impair the quality of merchandise, and tend to impoverish artisans formerly engaged in the trades concerned.[2] He also claims that Darcy's patent was a "dangerous innovation," because it extended monopoly privileges to an untrained and unskilled person, while excluding the trained artisans. Above all, from Coke's point of view, the patent--"against freedom of trade and traffic"--is void because it contradicts statute and Magna Carta.

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[1] See Birdsall, op.cit.; "This interpretation advances the boundaries of the subject's interest beyond all limits set by the earlier law books." (61) The fact that Coke later recanted this interpretation of non-obstante simply (62) demonstrates the great instability of the lines of thought at work here.(62)

[2] D. O. Wagner, "Coke and the Rise of Economic Liberalism," Economic History Review, vi, 1, 37.

> So...if grant be made to any man to have the sole dealing with any other trade, that grant is against the freedom and liberty of the subject, that before did or might have used that trade, and consequently against this Charter. Generally, all monopolies are against this great Charter because they are against the freedom and liberty of the subject, and against the law of the land.

From the perspective of the history of English law, *Darcy* v. *Allen*, following *Davenant* v. *Hurdis*, establishes as the law of the land the remarkable innovation that *all* monopolies are void. That Coke himself made certain exceptions to this principle, did not alter the fact that the lawyers were developing a mentality against economic control,[1] and one that was to raise serious questions about the nature of corporations in general.

The inadequacy of the precedents used by Coke in the attempt to tie this new principle to the old order is as manifest as it is in *Davenant* v. *Hurdis*. As Ogilvie rightly says: "Coke was trying to establish a new Common Law principle asserting freedom of enterprise, and to demonstrate that it was not new at all, but deductible from the decisions of the past."[2] Wagner and Thorne have shown how anomalous the whole undertaking was.

> Much is brought forward, including a chapter in Fortescue's *De Laudibus Legum Angliae*, a writ out of the Register, cases in the reigns of Edward III and Henry IV, a passage in the Old Testament, and one from Justinian's Institutes, but they are hardly convincing precedents. They form a disappointing collection, not at all characteristic of

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[1] See Lipson, *Economic History of England*, III, 360. During the 17th century, says Lipson, it became increasingly clear that the common law judges were "tending to look with disfavor upon restraints of trade," and that they regarded the common law as "incompatible with the exercise of the royal prerogative in economic affairs."

[2] Ogilvie, *op.cit.*, 140

> Coke's remarkable ability to find the answers to present discontents in the past. We may take them to show how little persuasion Coke and his colleques needed and also how new the problem was, for what is being enunciated is Elizabethan law, disguised as legal innovations usually are, in the cloth[illegible] past.[1]

One of the important precedents Coke employs is none [illegible]an Davenant v. Hurdis! A case that rests upon no historical foundation whatsoever is now being pressed into service to justify Darcy v. [illegible]. The 'old law' has become strangely recent. Moreover, nothing is said in Davenant v. Hurdis to verify one of Darcy v. Allen's most significant conclusions: "all trades...which prevent idleness are profitable to the commonwealth..." To prove that monopolies as such are invariably mischievous, all Coke can muster is Fitzherbert and a decision from Henry IV's reign, citations proving merely that grants are void if they burden the subject. "That they invariably did so," says Wagner, "still rested on Coke's bare assertions, which testified to his own economic views rather than to the illegality of monopolies in general."[2]

Coke's use of statutory analogy would appear to be highly questionable,[3] and his use of Magna Carta as ground for invalidating all monopolies is simply fanciful. Coke's general use of Magna Carta to justify whatever it is he happens to want to justify, has been aptly exposed by W. S. McKechnie:

> Although this commentary (in II Institutes), like everything else written by Coke, was long accepted as a work of great value, its method is in reality uncritical and unhistorical. The great lawyer

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[1] Thorne, "Edward Coke," 10.
[2] Wagner, op.cit., 37-38
[3] Ibid., 39

> reads into Magna Carta the entire body of the common law of the 17th century, of which he was admittedly a master. He seems almost unconscious of the changes wrought by the experience and vicissitudes of four centuries. The clauses of Magna Carta are merely occasions for expounding the law as it stood, not at the beginning of the 13th century, but in Coke's own day. In the skilful hands of Sir Edward, the great charter is made to attack the abuses of James and Charles, rather than those of John or Henry...In the clause of Henry's Charter which secures an open door to foreign merchants in England 'unless publicly prohibited,' he discovers a declaration that Parliament shall have the sole power to issue such prohibitions, forgetful that 'Parliament' did not exist in 1215, and that *regulation of trade was then an exclusive prerogative of the Crown*. [1]

Or, as Thorne comments, "I need hardly point out that 'liberties' in Magna Carta is the equivalent of 'immunities and franchises' and that ideas about free trade were Elizabethan ideas, not those of the barons petitioning King John."[2] On the basis of precedent, then, the case is certainly not proved. As Wagner concludes, "On the whole, Coke's arguement, based largely on the assumed abuses of monoplies, and supported by precedents which are, for the most part, applicable only if the initial assumptions are correct, resembles economic and political propaganda more than it does an impartial appeal to law."[3]

We wish to draw attention to the subtle but important shift that has taken place in the general discussion of law of corporations. No longer is the only issue prerogative *versus* common law control of corporate life. During the last years of the 16th century and the opening

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1. *Magna Carta. A Commentary on the Great Charter of King John.* (Glasgow: 19[illegible]); italics supplied.
2. Thorne, *op.cit.*, 10.
3. Wagner, *op.cit.*, 42.

years of the 17th century, the outlines begin to emerge of a legal understanding of economic relationships that is decisively new, and that is exceedingly important for the whole development of the common law. The question of who is to control economic life broadens and deepens to include the question what kind of control. The minute and direct restrictions which had been imposed and sanctioned by the 'law of the land,' were now summarily dismissed. Individuals acting economically possess, it was thought, the capacity for a high degree of self-regulation and self-determination. The place and function of the law was to provide the broad framework within which men would be both encouraged and enabled to develop economic self-control.

The emergence of this new understanding of control is marked in the field of contract law by what Professor Plucknett refers to as the "momentous" decision of Slade's Case (1602).[1] "No decision in the books," writes Simpson, "is ...more important in the history of...contracts."[2]

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[1] T.F.T.Plucknett, A Concise History of the Common Law ([illegible] 5 647f. In Plucknett's words, Slade's Case [illegible] iterates the distinction between debt and deceit, between contract and tort." Moreover, "the deceit element has been eliminated, and the contractual element, long latent...became the sole basis of the action, which now rested on the 'mutual executory agreement of both parties'." Seen against an historical background, Slade's Case marked no small revision in the law. As J. W. Salmond in "History of Contract," Law Quarterly Review, III (1887), 166-79, remarks: "...the early law (of debt) did not include a promise or agreement. The idea of the obligatory nature of a mere executory agreement seems to have been unknown, and part performance was a condition precedent to the existence of an obligation." (169) Of course, Norwood v. Reed (1558) and Strangborough and Warner's Case (1589) began to lay emphasis upon a promise in itself as the basis for legal action rather than a sealed agreement. Thus they served as forerunners to Slade's Case. Slade's Case is reported by Coke in 4 CR, 94a.

[2] A.W.B. Simpson, "The Place of Slade's Case in the History of Contract," Law Quarterly Review, 74 (1958), 38. Simpson continues: "the results of this new look at the antecedents of the case seem to suggest that its status as a leading decision is greater than has been supposed." (396)

It was this case, with its emphasis upon the 'mutual executory agreement of both parties,' which focused the new place being made for the legal recognition of simple voluntary business arrangements,[1] in contrast to direct legal controls of "high technique and inflexible rigidity."[2] By means of the changes in contract law, the individual was, in effect, set free to regulate his business relationships voluntarily or consensually within certain broad limits,[3] a development that shows striking congruence with aspects of the Calvinist-Puritan system of thought.[4]

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[1] Berman, *opcit.*, 376. The law of contract, according to Berman, is "the 'pure type' of voluntary legal arrangements," or it is "voluntarism within limits" (Professor Berman's words in private conversation).

[2] Ogilvie, *op.cit.*, 38-39.

[3] The controls implicit in the new notions of contract may best be described as indirect: they allow much more room for freedom of action than did the old forms of legal regulation. Of course, throughout our discussion of 'control' it is well to remember that taxation was never abolished nor were the minimal standards of what was and was not considered to be "lawful" activity (for example, standards for business practice as defined by tort law).

[4] The affinity between this legal emphasis upon *consensual relationships* (see Plucknett, *op.cit.*, 643 and W.S. Holdsworth, *op.cit.*, III, 428ff.) and the emphasis within Calvinist-Puritanism cannot be missed. It is true, specific reference to and development of contract law in Coke are simply too limited to permit the kind of analysis we have made of the law of corporations. One does not find the same extensive ideological justifications, even though, as Simpson points out (*op.cit.*, 392), elements in *Slade's Case* "can only be viewed as an astonishing act of judicial legislation." But if the elaboration of the idea of contract is slight in both the Elizabethan Puritans, and in the legal activity around Coke's time, the 'congruence' of thought here is extremely important. As it turns out, what Perkins called "thoughts and inward motions"--the source of true relationships with God and man--were coming to play a more significant role in the "courts of men" than even Perkins perceived. (See ftnt. 3, 174 above). The emphasis which the Puritan gave to "inward motions" as the primary basis for proper social order was, toward the turn of the 17th century, getting implemented in the law itself with the most important consequences. Like the Calvinist-Puritan frame of reference, and precisely because of the same emphasis upon internal- or self-determination of relationships, the idea of contract introduced a high degree of flexibility and innovation into economic action. This flexibility, says Berman (*op.cit.* 390), under which promises are "fungible," "corresponds to the great

In other words, the new legal evaluation of economic relationships, which comes to life during this period, regards direct governmental or juridical interference as in principle highly regressive.[1] The 'new

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flexibility of the free market and of the money economy, in which the great variety of different goods and other concrete economic values are rendered commensurable and hence exchangeable as abstract 'commodities.' So the legal personality--the right-and-duty-bearing unit--became the legal counterpart of economic man."

[1] Lipson indicates the widespread bias among the lawyers in favor of 'economic liberalism,' and he connects it in a most interesting way with the roots of *laissez faire* theory which he sees emerging around the turn of the 17th century. See Lipson, *op.cit.*,II, cxxxvff. "We may sum up by saying that as a rule the common law favoured the removal of restraints on economic enterprise. It still continued to pay nominal respect to the age-old principle of industrial regulation, and did not mingle privileges and monopolies in a sweeping condemnation, as 'unreasonable and unwarrantable.' It was prepared to bestow its approval and protection on patents and gild by-laws provided they were intended to promote the 'well-ordering of trade.' *None the less it tended to disallow any extension of restrictive practices to the new conditions which were developing on every side.* As a consequence the main current of economic life swept by the traditional framework of mediaeval society, unimpeded on its onward movement by any serious legal obstacles."

"The foregoing account" Lipson continues, "will have served to show that there are no adequate grounds for assuming that Adam Smith converted England to the doctrine of industrial freedom any more than that he converted England to the doctrine of the free exchange of goods...It is to the seventeenth century and not to the 'Industrial Revolution' nor to *The Wealth of Nations*, that we must look for the trend towards *laiesez faire* in industry and the explanation of its triumph. Adam Smith only gave articulate expression to ideas in whose direction the leaders of industry had long been feeling their way." "The events which are designated as the 'Industrial Revolution' constituted no sudden breach with the existing order but were part of a continuous movement which had already achieved marked advance. The famous inventions associated with the names of Arkwright, Watt, Stephenson and many others, were the climax of a long series of experiments, extending over two centuries, in which progress appeared infinitely slow because the initial stages are necessarily the slowest and most arduous."

It is very interesting that the 'spirit of capitalism' or of 'economic individualism' has usually been associated with the late 18th and early 19th centuries. It was thought to go hand in hand with the 'Industrial Revolution' (dated by Toynbee, Mantoux and others from around 1776--publishing of *Wealth of Nations*--to 1832--first Reform Bill). However, with the updating of the 'Industrial Revoluorder' of proper economic relationships is, as much as possible an independent order characterized by self-initiative and individual responsibility. This mentality explains the general antipathy to the existing kinds of political and legal regulation over economic activity which we discovered previously in *Davenant* v. *Hurdis* and *Darcy* v. *Allen.*

The antipathy to direct intervention becomes particularly clear in the *Tailors of Ipswich Case.*[1] In accordance with their charter, ratified by the justices of assize in keeping with an Act of 19 Hen. VIII c. 7, the Tailors Company sought to enforce an ordinance prohibiting tailors from practicing their craft until they had been licensed by the Company. The judges, "whose reasoning," says Wagner, "is distinguished by a liberal use of wise saws and doubtful precedents," rejected the Company's ordinance. Coke reports the basis for the decision:

> ...The law abhors idleness, the mother of all evil, *otium omnium vitiorum mater*, and especially in young men, who ought in their youth, (which is their seed time) to learn lawful sciences and trades, which are profitable to the commonwealth, and whereof they might reap the fruit in their old age, for idle in youth, poor in age; and *therefore* the common law abhors all monopolies, which prohibit any from working in any lawful trade;...(The ordinances of the Tailors Company) are against the liberty of the subject, and a means of extortion in drawing money from them... or of oppression of young tradesmen, by the old and rich

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tion' to the latter 16th and 17th centuries by such scholars as Nef and Lipson, it is not unimportant that the 'spirit of economic liberalism' should manifest itself, at least inchoately, in figures like Coke. For a further examination of this general problem, see W. J. Ashley, *Economic Organization of England*, Chapter VII, "The Industrial Revolution and Freedom of Contract," 140ff.

[1] 11 *CR*, 53aff.

> of the same trade, not permitting them to work in their trade freely; and all this is against the common law and the commonwealth...[1]

Coke does not concede that "ordinances for the good order and government of men of trades and mysteries are good, but not to restrain anyone in his lawful mystery." He does not give (either here or anywhere else) any criterion by which to decide between "order" and "hindrance," but such a problem does not trouble Coke, nor the court, because his heart is not in refinements of this kind. At all costs, he is concerned to set men free for work, and generally, it appears to him, corporate controls militate against that objective.

The Tailors Company had been established [illegible] Ipswich for two hundred years, and it had been incorporated by the King. If the defendant had infringed the charter during the reigns of Henry VII or VIII, the case, as Thorne points out, "would have been quickly and easily decided in the plaintiff's favour. The defendant would have gotten little sympathy from the courts."[2] Yet, Coke confidently asserts that the spirit of the Ipswich Case "is and always has been the common law." "In this outrageously unhistorical statement," continues Thorne, "several centuries of gild life are brushed aside as though they had never existed."

> Clearly we have left the fifteenth century behind, broken completely with the past, yet out of isolated remarks in fourteenth-century cases, and by ignoring others, Coke somehow managed to give this seventeenth-century view a semblance of historical

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1. 11 CR, 54a; italics supplied.
2. Thorne, op.cit., 11.

> support, So in his next point. In the middle ages the gild had supervised production, and seen to it that goods were well produced and that a man practising an art was skilful at it. It is not the past but the future that is implicit in Coke's remark that anyone may practice an art...[1]

Wagner's analysis of the case comes to the same conclusion: "the legal argument in this case is, on the whole, the feeblest we shall have to deal with."[2]

In his *Institutes* Coke elaborates and reenforces his reaction to economic control in keeping with his ideology of voluntary labor. "Monopolies in times past," he says, summarizing his entire position, "were ever without law, but never without friends."[3] Coke gives the term "monopoly" an extremely broad definition; it is, he argues,

> ...an Institution, or allowance by the King by his Grant, Commission, or otherwise to any person or persons, bodies politique, or corporate, of or for the sole buying, selling, making, working, or using of anything whereby any person or persons, bodies politique, or corporate, are sought to be restrained of any freedome, or liberty that they had before, or hindered in their lawfull trade.
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> And the law of the Realm, in this point is grounded upon the law of God, which saith, 'No man shall take a mill or an upper millstone in pledge, for he would be taking a life in pledge:' Whereby it appeareth that a mans trade is accounted his life, because it maintaineth his life; therefore the Monopolist that taketh away a mans trade, taketh away his life, and, therefore is so much more odious because he is *vir sanguinis*. Against these Inventors and Propounders of evill things, the holy ghost hath spoken, *Inventores malorum*, etc. *digni sunt morte*."[4]

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1. Thorne, *op.cit.*, 12.
2. Wagner, *op.cit.*, 43.
3. III *Institutes*, 182.
4. III *Institutes*, 181. We call special attention to the biblical justification for this ideology. The use of the Bible tells us much more about Coke's point of view than it does about the text. The strained

"That Monopolies are against the ancient and Fundamentall laws of the Realm...and that the Monopolist was in times past, and is much more now punishable, for obtaining and procuring of them, we will demonstrate it by reason, and prove it by authority."[1] Or, as he says in another connection, "this conclusion is necessarily gathered, that all monopolies concerning trade and traffique, are against the liberty and freedom, declared and graunted by this great Charter, and against divers other Acts of Parliament, which are good commentaries upon (it)..."[2]

Perhaps Coke's bias against economic control becomes strongest in a passage from II *Institutes*. It is, he says, "most commonly hurtfull to the Commonwealth" to create "*New Corporations trading into foreign parts, or at home, which under the fair pretence of order and government, in conclusion tend to the hindrance of trade and traffique, and in the end produce Monopolies*."[3] The logical rela[illegible] draws between the formation of corporations and the development of monopolies is a clear example of the new mentality regard-

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interpretations indicate new religous assumptions, which, needless say, could certainly not be found in Whitgift or Hooker. This is exegesis in a decidedly new key.

It is instructive to contrast this relentless emphasis on voluntary labor, which is found in Coke and the Puritans, with the more amiable attitude toward idleness represented by such a leading official Anglican as Stephen Gardiner. Gardiner writes: "Slothful, sluggish and idle fellows spoil themselves by their laziness; they infringe God's law, *yet they do not touch the Commonwealth, nor do they disturb it, still less do they cast it in confusion*." Qupted in Powicke, *op.cit.*, 110-11; italics supplied. Gardiner goes on to argue that rather than the idle it is Bucer and the point of view he embodies which "treads under foot all order," and "tramples down the common weal."

1. III *Institutes*, 181.
2. II *Institutes*, 63.
3. II *Institutes*, 540, italics supplied.

ing corporations in general to which we have referred. There is an important hint that the very organization of economic life into corporate forms whose status and function are limited and controlled by the common law, is *in itself repressive and detrimental*. Quite unconsciously, and in complete contradiction to themes we discovered earlier, we see emerging in Coke's theory of corporations, not only the obvious deprecation of royal political control over economic activity, but also (implicitly, at least) *the rejection of many of the established forms of political-legal regulation of economic life*. There is a deep-seated thrust in Coke's writing in favor of the autonomy of business and industry, of general freedom from restraint, in order **that individuals** may become, in Coke's word, "voluntaries."

In keeping with what we said above about the emergence of a decisively new conception of economic control, it would be inaccurate to claim that Coke and the common lawyers, in rejecting many of the existing forms of control over corporate economic life, thereby minimized the importance of economic association as such. Men are by no means 'atomized' individuals for whom social relationships are insignificant. There is no notion here of the individual over against society. On the contrary, the individual fulfills himself in a new form of self-regulated association. As we have suggested, the development of the law of contract provided the means whereby the law could 'make room' for this new emphasis upon voluntary business arrangements.

At the same time, there is profound resistance to the legal task of defining and regulating corporate associations themselves. As in the statement quoted above on new corporations, Coke at important points apparently feels that the very process of incorporation carries with it the kind of direct legal interference in economic life which he opposes. Because Coke stands so close to the medieval conception of corporation in which "monoply" and "direct control" are the conditions sine qua non, it is perhaps not surprising that he takes such a negative view. To talk of corporations is, for Coke, to talk of undue restraint. It does not occur to him that new forms of legal association might be worked out in accord with his 'voluntaristic' objectives. At least, he manifests no concern whatsoever in constructing a corporate theory to meet the demands of the times.

There is, in other words, a general devaluation of traditional corporate structures. It begins to appear that this dimension of "free enterprise" is what Coke means by the "rule of the common law." For him, this is the true measure of what the law has always really been, although he regretfully tolerates certain special corporate privileges because they have the "force of custom" as well as the "authority of parliament."

As we have glimpsed already, the thrust of Coke's position is by no means only negative. He is not simply opposed to monopoly restraints. From his point of view, the 'old law' has free-willing industriousness for its goal. While, on the one hand, the law must emancipate economic life from direct restraints and special privileges, it must, on the other, throw its whole weight behind the encouragement and nourishment of voluntary labor. The positive functions of the law in this respect are spelled out more fully in Coke's attitude toward the poor laws, than in his decisions and pronouncements on corporations. Indeed, an examination of his treatment of the poor laws fills in important dimensions of the mentality at work in the cases on corporation.

The intense preoccupation with "the execution of good laws" to "set the young and idle people as voluntaries on worke"[1] is summarized in Coke's Charge given at Norwich in 1607:

> And the tranquilitie of our Publicke weale preserved: which so great happinesse, that it may the better be accomplished, I would request, that all imployed in any place of authoritie, would have an speciall care to suppresse that root of evill, from whence all mischiefs do proceed, and that is idleness;..For were the Justice of the Lawe rightly executed uppon such offendors...(they) would be inforced to betake themselves unto a better course of life, and live as becometh good Subjects in the list of a more commended obedience.

The attitude toward poor laws expressed in this sentence must, of course, be seen against a background of growing concern in England over the impoverished and the idle. Already in the 13th century public sentiment for the poor and vagrants was awakened. However, due to the enclosures, the dissolution of the monasteries and so on, it was only by the 16th century that beggars and vagrants became "a chronic plague."[2] Legislative relief became imperative, and many experiments were developed, none of which was particularly effective in itself, but each experiment contributed to the shaping of a general Elizabethan policy. Among these experiments was the creation of Bridewell, an almshouse, which was to serve as the model for the later Houses of Correction. Bridewell was an attempt to meet the increasing demand that something be done with the army of "sturdy beggars" that roamed the countryside. Its punitive character marked the rising antagonism against vagrants, voiced in the latter 16th and in the 17th centuries. Coke reflected that growing antagonism.

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[1] II Institutes, 734.

[2] Leonard, Early History of English Poor Relief, 11.

But Coke was not at all satisfied with the various pieces of major legislation which had been passed toward the beginning of the 17th century. Despite the extremely harsh bills against the vagrants in 1572 and 1597,[1] Coke could still remark in his *Institutes*: "True it is that there be good lawes already to punish idlenesse, but none of sufficient force or effect to set youth, or the idle on work."[2] Coke is concerned to root out all forms of idleness with unrelenting zeal. He is as opposed to the "sort of seeming Gentlemen" as he is to the sturdy beggar. The law must find out such fellows and *teach* *them* "that the wisdome of of a Kingdome's state, in the framing of a statute Law, could not be deluded by a vaine and shallow braind idlenesse of their ridiculous Foolery."[3]

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[1] It was Elizabeth 39 that Perkins spoke so highly of. According to Black, *op.cit.*, 223-24, the Act of 1572 made the treatment of the sturdy beggar much harsher than previous measures: "He was to be whipped and bored through the gristle of the right ear, and if he continued in his roguery he was to suffer, in the last resort, death for felony." By an amendment in 1576 rogues "were to be sent to 'houses of correction', two of which were to be erected in each county, and there disciplined to labour." The Act of 1597, says Black, modified the brutality somewhat, although only relatively: "Boring of the ear was dropped, but the sturdy beggar, after being whipped 'until his or her body be bloody', was to be sent back to his birthplace, or, if that was unknown, to the place where he last dwelt, and there to be thrown into a house of correction or the common jail until he could be placed in service."

[2] III *Institutes*, Epilogue.

[3] *Charge*.

Consequently, he praises 7 Jac. Regis, 4 (1609-10) as far superior to 39 Eliz. c. 4 (1597), for the instruments of enforcement it provides, and for its profounder grasp of the problem of idleness. The main intention of the bill is to intensify the activity of the Justices of Peace in the job of ferreting out idle persons and making sure they are sent to Houses of Correction. According to Leonard, this bill is completely unconcerned with the 'deserving poor' and focuses its attention exclusively upon transforming the indolent. It probably marks the time, she says, "when Houses of Correction ceased to be half-work houses and became much more like gaols."[1] Coke points out in his commentary on the statute, that 39 Eliz. resolved that able-bodied persons who refused to work should be sent to a House of Correction. Nonetheless, the distinction between 39 Eliz. and 7 Jac. at just this point was, for Coke, crucial:

> But (said 39 Eliz.) if they have any lawfull meanes to live by, though they be of able bodies, and refuse to worke, yet are they not to be sent to the House of Correction.
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> But by this Statute of 7 Jac...*though they have lawfull meanes to live by*, yet if they ~~if they~~ be idle or disorderly persons, the Justices of Peace have power to committ them to the House of Correction, a generall and large power given to them, *without exception of any person*. And their Mittimus to the House of Correction may be more safely upon this Statute, *Quia otiosa et inordinata persona*: for that he is an idle person, or that he is a disorderly person, according to the words of this Act, (than) upon the statute of 39 Eliz.[2]

With respect to the general concerns of our analysis, this passage is extremely important. It designates unavoidably the significance of *work as an end in itself*. Even though individuals possess

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1. Leonard, *op.cit.*, 137.
2. II *Institutes*, 730-1; italics supplied.

"Lawfull meanes to live by," if they are idle, they must be set on work! It is not so much poverty and mendicancy that is of primary importance here, but the disinclination to work. That, above all, is what must be rooted out. That is what the law must change. For this reason, Coke hopes for "the better and more speedy execution of these excellent Statutes..."[1] "For that few or none are committed to the common Gaole amongst so many malefactors but they come out worse than they went in. And few are committed to the House of Correction, or Working House, but they come out better."[2]

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[1] II *Institutes*, 734.

[2] *Ibid.*; Coke's spirit in these matters lived on in many of the legal treatises of the 17th century and even into the 18th. See, for example, Henry Hobart's *Reports* (London, 1678) for a heavy reliance on Coke in questions of 'freedom of trade,' particularly *Norris* v. *Staps*, 210-12. See, also, Micheal Dalton's *Country Justice* (London, 1728). On 177f. he states that every Justice of the Peace "may cause all such Artificers and other Persons fit to labour, to work by the Day in Haytime, and Harvest-time, for the Saving of Corn and Hay, and may, upon their Refusal, imprison them in the Stocks..." If the Justice does not do this, states Dalton, he shall be fined 40 shillings. Citing II *CR*, 53, he says that "by the Common Law, no Man may be prohibited to work in any lawful Trade, for the Law abhorreth Idleness, as the Mother of all Evil." See, also, 182ff. In chapter LXXXIII, "Rogues and Vagabonds" (304-14), Dalton states that the laws are made for "setting to work." "Idleness is very much repressed: Idleness, which of itself is the Root of all Evil." "Infinite swarms of idle vagabonds are rooted out, which before wandered up and down to the great Danger and Indignity of our Nation." A vagabond he defines as a man "sine re, sine spe, *sine fide*, sine sede." (Italics supplied--notice the concern with religious faith in the definition.) Finally, see William Sheppard, *Of Corporations, Fraternities and Guilds*, etc. (London, 1659), for perhaps the earliest treatise on corporations. Sheppard simply recaptitulates and systematizes Coke's decisions on corporations. With respect to 'freedom of trade,' Sheppard says: All such clauses of Charters are void that "put upon the subject any illegal Imposition or charge: As...such restraints or impositions that are against the common liberty of the subject..." He cites the *Ipswich Case* in justification.

Taking, then, the emphasis upon voluntary labor that is found in Coke's treatment of the poor laws, together with the sentiments expressed in *Davenant* v. *Hurdis*, *Darcy* v. *Allen*, the *Tailors of Ipswich Case* and in sections of the *Institutes*, it becomes obvious that there are dimensions of a logic of order which conflict drastically with Coke's broader 'theory' of law, and with many of the ideas we discovered in such decisions as the *City of London Case* and the *Chamberlain of London's Case*. The conception of an omnicompetant, all-encompassing common law able directly to control, define and reflect the unity and harmony of the entire social order in accord with existing or established patterns, has now been sharply altered. The idea that the common law sanctions and regulates the special economic privileges of "ancient" corporations, as, for example, in the *City of London Case*, is now replaced by a notion of law which *sets a considerable portion of the social order free to act by its own laws and to develop its own order*-in fact, the law is responsible for driving things in that direction. Coke's passion for an economic society in which men become unrestrained "voluntaries" is every bit as intense as Perkins'; indeed, it will by now be clear how close to the Calvinist-Puritan logic of order this set of new dimensions in Coke's thought is.[1] There is here a quite different understanding of social action and relations, one that introduces tension into Coke's thought compellingly analagous to the kind of tension we have seen between Puritanism and Anglicanism.[1]

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[1] Throughout our analysis of Calvin, Cartwright and Perkins we noticed the centrality of a reforming zeal in the logic of order they share. By them the law is intensified and turned to the service of a dynamic new order whose relations are determined, ideally, by the voluntary decisions of its members. "Inward motion" as Perkins put it, or self-initiative, through which the members 'mirror' the self-determination of the sovereign God, becomes the key to true order. In the hands of Calvin and the Elizabethan Puritans, the command or will of God (his law) impels all men in the direction of such a community and measures them by the degree of their participation in it.

With respect to the impact of this kind of 'voluntarism' upon the law of corporations, one cannot help recalling part of Hooker's statement on the social effects of Puritanism. Among its other destructive

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It is this intricate (and usually overlooked) connection between intense, coercive [illegible]al prodding and voluntarism that finds very explicit expression in Coke's views. In this section on vagrant laws and in the earlier discussion of 'freedom of trade,' the ultimate ideal or value, in whose service the law stands, is just such voluntarism. For Coke this is particularly amazing because the law is thereby subordinated to a set of values that are fundamentally opposed to a prescribed, legalistic social system. That is, in this set of values, the ultimate source of order rests, emphatically, not in the precedents of the past, but in the "inward motions" of the "voluntaries."

[1] For Whitgift and Hooker, the kind of emphasis upon self-initiative in economic relations which is found in the Calvinist-Puritan logic of order, and which here finds such a striking parallel in Coke, threatens to "overturn the world and make every man his own commander." (Hooker, Laws, I, 363.) Hooker writes: "Those things which the law of God leaveth arbitrary and at liberty are all subject unto positive laws of men, which laws for the common benefit abridge particular men's liberty in such things as far as the rules of equity will suffer." (Loc.cit.) Yet with respect to existing corporation law, at least, we find Coke brushing aside several centuries of positive laws on the assumption that direct intervention in economic activity is deleterious. Not only does he 'make room' for 'free enterprise,' but he also turns the law to the service of what Weber called 'inner-worldy asceticism,' i. e. to the encouragement of self-initiated and self-determined activism. To use the law in this way would have horrified Hooker and Whitgift. For them, the law does not drive towards or point to any independent source of order beyond itself.

The general point we wish to make is simply that the sentiment for direct common law control of corporate association, which we discovered in our earlier analysis, and the sentiment for freedom of economic action, discussed in this section, is congruent with a similar theological conflict.

The evidence we have cited would seem to indicate the conflicting influences of Anglicanism and Puritanism on the legal profession, though the question of 'cause' and 'influence' is particularly complex here. Our only claim at this point is that there are important positive relationships or congruences between theological and legal thought.

consequences, it "shaketh universally the fabric of government...dissipateth...corporations...and whatsoever is now through the providence of God by authority and power upheld."[1] The dimensions of Coke's thought we have just analysed, which correspond so remarkably to the implications of the Puritan system, had an exceedingly "dissipating" effect upon his attitude toward corporations. Corporations tended, afterall, to produce monopolies! On the other hand, he was not ready to do away with all corporations, nor with all of their special privileges. Under certain circumstances, exclusive corporate control is acceptable, though it must, of course, be subjected to the common law.

The problem is that these two different approaches to corporations--the one akin to the Puritan understanding of society and the other to the Anglican--do not get on well together. Francis Bacon saw the deep confusion very perceptively in a speech he made in the House of Commons in 1601.[2] After eloquently defending the Queen's right to the full use of her prerogative, he remarked with not a little sarcasm: "If her Majesty makes a patent, or a monopoly, to any of her servants; that we must go and cry out against: But if she grants it to a number of burgesses, or corporation, that must stand; and that, forsooth, is no monopoly."[1] The process of reasoning by which an industrial or craft monopoly was rejected and a municipal monopoly (e. g. London) accepted was, of course, just the issue. If the "rule of common law" or "common right" stood consistently against all monopolies (as Coke said more than once), and if it sponsored freedom from restraint and control, how was it that the 'ancient law' could also justify the most rigorous kind of corporate monopoly privilege? And if liberty of economic action was such an obvious "rule" of the old law, enacted by so many "divers acts of parliament," how was it that so many other Acts of Parliament and so many customs had so often endorsed and extended these monopoly privileges? Coke's mind boggled at these questions. He had no answer. He could only utter the solemn refrain: "It is to be observed that acts of parliament that are made against the freedom of trade...never live long."[2]

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[1] Hooker, II, 362; see above.

[2] Mosse's judgment (Struggle for Sovereignty, 95) that Bacon and Coke were united around the idea of 'free trade' is most curious indeed. Bacon's thoughts on the subject could hardly have been more strongly opposed to the kind of free-trade mentality that Coke represented. In his speech in 1601 before Commons, Bacon made himself clear: "The queen, as she is our sovereign, hath both an enlarging and restraining liberty of her prerogative; that is, she hath power by her patents, to set at liberty things restrained by statute-law or otherwise; And by her prerogative, she may restrain things that are at liberty."

Some sort of uneasy coexistence had to be struck between these contending views, and that was soon accomplished in the Statute of Monopolies (21 Jac. I, c. 3; 1623-4), whose drafting was inspired by Coke himself. The statute is the fruit of over thirty years' agitation against monopolies which had first come to a head in the Parliament of 1601. Elizabeth had assuaged Parliament's ire by conceding common law jurisdiction over letters patent, and by promising that the most obnoxious monopolies would be promptly eliminated. Parliament and the country were temporarily satisfied, especially so since the beginning of James's reign was punctuated with pious statements against the issuing of exclusive patents. Such statements appeared, for example, in the *Book of Bounty* (1610). It announced the king's opposition to "all grants of monopolies," but soon thereafter James commenced a wild policy of patent-granting to outstrip anything seen up to his time. The Statute of Monopolies held against him his early remarks in the *Book of Bounty*:

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[1] Reprinted in Price, op.cit., 154-5. Referred to in Neale, op.cit., II, 378.

[2] IV Institutes, 31.

> Forasmuch as your most excellent Majesty...did in (1610)...publish in print to the whole realm and to all posterity, that all grants of monopolies and of the benefit of any penal laws, or of power to dispense with the law, or to compound for the forfeiture, are contrary to your Majesty's laws, which your Majesty's declaration is truly consonant and agreeable to the ancient and fundamental laws of this your realm...

In broad and inclusive language, the Statute proceeds to lay it down that

> *all monopolies and all commissions, grants, licenses, charters, and letters patents heretofore made or granted, or heretofore to be made or granted to any person or persons, bodies politic or corporate whatsoever*, of or for the sole buying, selling, making, working or using of anything within this realm or the dominion of Wales, or of any other monopolies or of power, liberty, or faculty to dispense with any others, or to give license or toleration to do, use, or exercise anything against the tenor or purport of any law or statute...*are altogether contrary to the laws of this realm, and so are and shall be utterly void and none effect*, and in no wise put in use or execution.

However, at Section V, there begins a long discussion concerning exceptions to this pronouncement. Permission is given for special protection of infant industries, new inventions and the like. Then, at Section IX, there appears a set of provisions of the greatest interest to us:

> Provided also, and it is hereby further intended, declared, and enacted that this act or anything therein contained shall not in any wise extend or be prejudicial unto the city of London, or to any city, borough, or town corporate within this realm, for or concerning any grants, charters, or letters patents to them or any of them made or granted, or for or concerning any custom or customs used within them or any of them or unto any corporations, companies, or fellowships of any art, trade, occupation, or mistery, or to any companies or societies of merchants within this realm, erected for the maintenance, enlargement, or ordering of any trade of merchandise, but that the same charters, customs, corporations, companies, fellowships, and societies, and their liberties, privileges, powers, and immunities, shall be and continue of such force and effect as they were before the making of this act, and of none other...

This means of jamming the contradictory tendencies together is hardly satisfactory.[1] That there is no explicit or implicit attempt to relate or harmonize Sections I and IX may be taken as evidence of the same sublime confidence that we have discovered in Coke. Somehow apparent contradictions and unclarities within the law simply do reconcile themselves eventually. Such is the unity and harmony of the "ancient and fundamental laws of this your realm." It is an article of faith.

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[1] These contrasting passages are full of confusions. In Section I the statement that "all monopolies...granted to any person or persons, bodies politic or corporate whatsoever...are altogether contrary to the laws of this realm" is, as should by now be obvious, patently absurd. Historically, the creation of "companies or societies of merchants...for the maintenance, enlargement, or ordering of any trade of merchandise" (IX) involved by definition "the sole buying, selling, making, working or using" (I) of a given trade, craft or range of goods. It would, for example, be hard to show that the Company of the Ipswich Tailors, established for some two centuries, was not "erected for the maintenance, enlargement, or ordering" of a trade. Yet it was rather arbitrarily adjuged under the strictures of Section I and rendered illegal.

The point is these definitions are so broad and so overlapping that there is no specific criterion by which to make a decision. Consequently, common law decisions as to what was and was not a "monoply" were, as in the Tailors of Ipswich Case, simply arbitrary and depended on the ideological assumptions of the judges.

But sublime confidence did little to solve the kind of hard problems at corporation law which were symbolized in the conflict we have discussed. A. B. DuBois points out in his excellent book, *The English Business Company after the Bubble Act, 1720-1800*, that the inadequacies of corporation law, as formalized by Coke, broke forth abruptly with the South Sea Bubble. "While rules about boroughs and hospitals moved sedately in the grooves of the *Case of Sutton's Hospital*, blessed with all the authority royal judges could bestow on them, the officers of the Crown made it obvious enough that the business company had little in common with these genteel institutions of tradition. The business company took its law where it found it...."[1] Coke had, afterall, counseled that new corporations trading abroad and at home tend "in the end (to) produce monopolies," and, therefore, ought to be avoided. That opinion does not inspire the creation of a constructive law to deal with the increasingly active joint-stock companies engaged in just such trade. It is clear that no adequate law was ever worked out or even hinted at. Coke and his contemporary lawyers were too busy abolishing restraints.

After the Bubble Act, according to DuBois, the business company was stringently suppressed by the government and the courts. Throughout the 18th century, as a result of the Act and the anti-corporation mentality it engendered, "the business man was being restrained from forming new enterprises either with or without government authority."[2] Consequently, there arose the unincorporated business which operated more or less

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[1] DuBois, *op.cit.*, 12

[2] *Ibid.*, 24.

"underground,"[1] and rarely encountered Parliament, the courts or the Crown officials. It was, says DuBois, "permitted to proceed placidly on its unregulated way."[2] There developed what might be called an 'a-legal' view of corporations: their activity was carried on quite outside the purview of the law. "But," DuBois continues, "in an age in which mercantilism was declining and which was soon to embrace the *laissez-faire* of Adam Smith and the sweet reasonableness of giving free play to the enlightened self-interest of the capitalist, more comprehensive regulation could hardly be expected."[3] There was, it seems, a fairly clear articulation of anti-corporation sentiment already in the middle of the 18th century. C. Yorke argued in a report on business companies in 1761:

> The Crown has very wisely been always cautious of incorporating traders because such bodies will either grow too great and by overwhelming Individuals become Monopolies or else by failing will involve themselves in the Ruin intendent upon a Corporate Bankruptcy. As Trade seldom requires the Aid of such Combinations but thrives better when left open to the free speculation of private Men, such measures are only expedient when the Trade is impracticable upon any other basis than a joint Stock...[4]

We would like to suggest that this ideology of voluntarism which in part contributed to the anti-corporation mentality of the 18th century, has its roots precisely in the period we have been analysing. That a viable and constructive law of corporations did not develop after

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1. Abram Chayes' introduction to Davis, *op.cit.*, iii.
2. DuBois, *op.cit.*, 438.
3. *Loc.cit.*
4. *Cited by* DuBois, 29.

Coke, was perhaps not simply the result of his orientation to the Middle Ages, and his formalization of medieval corporation law, but also of his more positive allegiance to exactly the same kind of ideology. That is to say, the corporation law that Coke formalized was irrelevant to business activity not just by default, but by virtue of his inclination to trust in the self-regulation of an autonomous business community. Coke restricted his attention to medieval corporations because they were the only exceptions that he, given his general antagonism to direct control, could tolerate. He was even dubious about them.

All this bring us to say a final word about Coke's general theory of corporations, a question that has been eruditely discussed by many distinguished scholars. According to Hallis, Laski, Davis and Carr, among other, Coke was the exponent of a fictitious or artificial view of corporations. Hallis summarizes their view:

> Corporations 'rest only in intendment and consideration of the law.' As legal subjects they are distinct and in kind different from the visible aggregate of their individual members. These individuals do not constitute the substance of that entity to which the law ascribes personality when it recognizes a corporation aggregate as a legal subject. Accordingly, Coke held that the legal existence of a corporation aggregate did not depend upon the activities of its living members but simply and solely upon the act of the legal authority which created it. 1

Carr supplements this argument by claiming that Coke had a clearly developed concession theory by which the crown is seen as the creator

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1. Frederick Hallis, Corporate Personality (Oxford, 1930), xlii-xliii. For an excellent summary of the general problem of corporate personality, cf. Ernst Freund, Legal Nature of Corporations, (Chicago, 1897).

and supervisor of all corporate activity.[1] He also argues that the fiction theory to be found in Coke concurred with a general feeling of hostility toward corporations. It led to the notion that their power ought really to rest with the state. Davis, moreover, makes the interesting observation that the increasing 'individualism' of the 16th century prompted the law "to insist on finding a person, natural or other, to stand for the scattered powers, unabsorbed by the state, that were left over from the feudal period."[2] "The law recognized no technical corporations until it had reached the basis of the individual as a social unity."[3] This, he says, is the background of the *persona ficta*.

Professor Pollock, however, has strongly resisted this thesis in an essay entitled "Has the Common Law Received the Fiction Theory of Corporations."[4] His answer is quite persuasively no. He argues that dogmatic theories have never come easily to English law, and that its doctrines "get settled either by gradual process of semi-conscious consent worked out in the solution of particular cases, or by the development, in the same manner, of conflicting tendencies in professional and judicial opinion until at last a decisive practical choice is called for."[5] That process, he says, is true of the 'fiction theory.' He points out that "artificial" in this context does not mean "fictitious," but "in accordance with the lawyer's art: lawyerlike, juridical."[6]

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1. C.T.Carr, *General Principles of Law of Corporations*, 167. Cf.Laski, *op.cit.*, 587.
2. Davis, *op.cit.*, II, 242-43.
3. *Ibid.*, II, 242.
4. *Law Quarterly Review*, 27 (1911), 219-35.
5. *Ibid.*, 219.
6. *Ibid.*, 220.

claims that it was a part of Coke's view that a corporation has a right "to do...all such acts in the law as a natural man may by deed..." Were that the case, Coke would have had a constructive, consistent and highly sophisticated understanding of corporate life. It would have meant that the corporation was a fully recognized entity with a fully affirmative significance. Such a view has a rich legal history,[1] and many lawyers have attempted to derive it from Coke. But we have found no evidence to justify it. It attributes to Coke's interpretation a stability it simply did not have. At best, Coke's theory of corporations was confused. At worst, it was negative.

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[1] For example, the view that both civil and ecclesiastical corporations have the power to alienate "as fully as any individual may do with respect to his property" was expressed in Kyd's two-volume work on the law of corporations in 1793-94. Such a view lends support to the idea that the corporation is conceived of "as a natural man." (Kyd is quoted in Carr, *op.cit.*, 48.) Perhaps the most famous articulation of this view was given by Blackburn, J. in *Riche* v. *Ashbury Railway Carriage Co.* (1875). Blackburn's words are particularly interesting to us because he bases his decision upon *Sutton's Hospital Case*. "This seems to me an express authority that at common law it is an incident to a corporation to use its common seal for the purpose of binding itself to anything to which a natural person could bind himself, and to deal with its property as a natural person might deal with his own." Cf. *A.-G.* v. *Manchester Corporation* (1906), *Baroness Wenlock* v. *River Dee Commissioness* (1887). In *Willmott* v. *London Road Car Co.* (1910), a corporation was found to be a 'respectable and responsible person.' See Paul Vindgradoff and H. G. Hanbury, *Common Sense in Law* (London, 1959), 58ff. for a brief treatment of this subject. See, also the extremely interesting comments by Friedmann, *op.cit.*, on the extension of the "indestructible right of the individual" to the corporation in 19th-century America, 88ff.

CONCLUSION

With respect to our first area of concern, the independent logic of theological language and the relation of that logic to patterns of social action, we have discovered several things. In general, we would claim, we have confirmed and somewhat deepend Max Weber's original assertion in the *Protestant Ethic and the Spirit of Capitalism* that religous principles and values are more than reflections of socio-economic factors, and that they are of independent importance in social action. It is hoped that our examination will, in part at least, have helped to tilt the historical discussion back in Weber's favor, and that it will have added to the already significant body of literature, which, rather than ignoring Weber or "refuting" him, properly seeks to take up where he stopped. More specifically, we have seen, in the first place, that once the peculiar organization and elaboration of the components of the word 'order' have been identified and sorted out within a given theological system, we have a method for characterizing the *Eigensetzlichkeit* of the system. In the case of Calvinism, Elizabethan Puritanism and official Anglicanism, the variety of relevant terms and concepts followed amazingly consistent patterns according to the fundamental conception each had of the configuration of the components of 'order.' We have seen that when the 'logic of order' is the analytical starting-point, it becomes very meaningful to speak of abstractions like 'Calvinism' and 'Anglicanism' as having discreet theological unity and coherence. On the basis of our analysis, it was possible to demonstrate the profound similar-

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ities between the theology and social theory of Calvin and those of Cartwright and Perkins. It was further possible to reveal the fundamental divergence between Elizabethan Puritanism and the Anglicanism of Whitgift and Hooker. We found that the 'logic of reformation,' which underlies the Puritan conception of 'new order,' contrasts sharply with the 'logic of conformation' found at the heart of the Anglican notion of 'old order.'

In the second place, we have discovered that the theological-ethical conflict between the Anglicans and the Puritans--between conforming social action to an 'old law,' and reforming it to a 'new' one--coincides remarkably with the kinds of confusion and ambiguity that are present in the legal understanding and definition of group life around the turn of the 17th century. It became apparent to us that the general 'legal theory' of Edward Coke, the formative jurist of the time, as well as part of his reasoning with respect to corporations, was informed by a conception of the supremacy of the 'law of the land.' Not the prerogative of the crown, but the 'ancient law of the realm' defined, controlled and regulated the social or group relations of Englishmen. In a series of cases, *Prince's Case*, *Sutton's Hospital Case*, the *Dean and Chapter of Norwich Case*, the *Chamberlain of London's Case* and the *City of London Case*, it was revealed that the common law was itself conceived to be the source of social order and harmony. According to these decisions, social life, including economic relationships, was directly subject to the determination of the law on the basis of 'past precedents,' precedents that often condoned special corporate privileges. It is this strain in Coke's thought which, we argued, was close to the affirmations of the official Anglican position.

At the same time, we discovered that other decisions, namely Davenant v. Hurdis, Darcy v. Allen and the Tailors of Ipswich Case, together with passages from Coke's Institutes, reflected quite a different and conflicting logic of order. The reasoning here was in favor of the emancipation of particularly economic relationships from a large measure of direct controls. Special corporate privilege was rendered "ever against the law," and Englishmen were charged to order their own economic associations in "freedom" as "voluntaries." There was, we found, a general suspicion of corporate business organizations, and a somewhat sublime faith that within certain braod limitations (e. g. law of contract), business activity could 'take care of itself.' The law was responsible, on the one hand, to make room for the autonomy of voluntary economic action, and, on the other, to drive citizens to a high degree of self-initiative and voluntary labor; it was responsible, to use Professor Parsons' phrase, to "force men to be free." We found this emphasis upon free, voluntary business arrangements very congruent with the implications of Elizabethan Puritanism.

Finally, we suggested that the 'conflict in law and order,' reflected in Coke's thinking, manifested itself in legal and social developments of the 17th and 18th centuries. The reluctance of the lawyers to find a law of corporations which could adequately deal with the increasing business and industrial activity of the time, their indifference to the growing 'a-legality' of many trading and manufacturing enterprises, and their readiness to consider as corporations only that limited range of exceptions--hospitals, schools, municipalities--which had, in the first place, been inconsistently singled out by Coke himself, all of these ingredients of a new legal spirit were, we have argued, originally insinuated by Coke. The spirit of direct supervision and regulation of social life by the common law, apparent, for example, in the City of London Case, does not readily harmonize with the spirit of the voluntary autonomy of economic association apparent in the Tailors of Ipswich Case. It is this central conflict that strikes us as being positively related to the theological collision of the late 16th century.

Without trivializing or over-simplifying the connections between religion and law during the late 16th and early 17th centuries, we seem safe in asserting both that the theological conflict expressed a crisis in socio-legal categories, and that the socio-legal conflict expressed a crisis in theology.

But it is no simple conflict we have been dealing with; it may not be reduced, as, for example, Hill has reduced it, to a clash between "the medoeval, the Catholic, the hierarchic, the feudal; and the modern, the Protestant-rationalist, the individualist, the bourgeois."[1] Neither Whitgift, Hooker nor Coke is very meaningfully referred to as "medieval" or "feudal." Their theory of law and order is, in its own way, as different from medieval theology and legal thought as Calvinist-Puritanism is.

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[1] Hill, "Thomas Hobbes and the Revolution in Political Thought," Puritanism and Revolution, 285.

Simply because they orient their thinking to the 'ancient realm' does not in any way mean that their understanding was, in fact, historically accurate. It manifestly was not. On the contrary, the 'old English order'--as Whitgift, Hooker and Coke conceived it--was a product of the 16th century; it was a system of interpretation whose coherence inhered much more in its own logological assumptions than in the facts of history.

The period we have examined is the battleground for two divergent logics of order, both belonging to the post-Reformation. And the components and influence of each system are inseparable from the dynamics of post-Reformation social life. One cannot,we are convinced, finally understand either the society or the theology apart from the "rich congruence" between them.

It may be suggested that a very important area for further investigation is the subsequent relationship in Anglo-American social, legal, political and economic thought of the 'logic of the old order' and the 'logic of the new order.' The fascination with the past as well as with the future, with the old as well as with the new, has characterized both English and American social thought since the turn of the 17th century. At certain periods these two logics have been mingled and intertwined, at other times, they have been more clearly in tension with each other. It would be interesting to explore in what ways they have conflicted with one another and to what extent they have found some degree of co-existence possible. If, as seems increasingly evident, the foundations of 'modern society' were laid around the end of the 16th century and the beginning of the 17th, then one would expect some special and important continuities between that period and subsequent developments at the 'ideational' as well as at the 'material' level.

There is a second matter, mentioned in the Preface and hinted at in footnotes throughout the essay, which ought to be touched upon. It concerns the adequacy of the theological content brought to the social situation of early 17th-century England. Obviously, this is a subject fit for a separate essay, and one hardly to be settled in the course of a few concluding remarks. Still, this study was not born of a purely analytical interest, nor are its conclusions intended as contributions only to historical and social science. Coupled with the analytical concern is an ethical one. How satisfactory was the Puritan logic of order that was offered to an emerging 'modern society'? We shall raise a few pertinent questions that can only be suggestive of further work to be done in the field.

Unquestionably, the crucial contribution of Calvinist-Puritanism was its orientation towards a differentiated 'new order' that, in part at least, overruled the 'old order.' As we have seen, this orientation emphasized a flexible and fluid set of social relations regulated by the electing acts of the elect. The new order, with its high premium upon individual initiative (the "free-willing conscience" or the "inward motions"), stood in sharp contrast to the coercive, externally-determined regulations of the political and legal sphere. Indeed, ideally, the latter should be subordinated to the goals and purposes of the former. All society should be reformed in the image of God's new community:

it is the wave of the future.

The central problem arises at the point of the relationship between the new order and the old. On the one hand, we learn that the two are sharply differentiated from each other, that the voluntary and the coercive spheres do not mix. We are told by Calvin that "they always require to be considered separately." On the other hand, the new order becomes the model and the master for the old. As it was in Geneva, and no doubt would have been in England had the Presbyterians won the day, the church is the vessel of the true order of God; it directs the reformation of society into the image of obedience. "Every kingdom that does not serve the Kingdom of Christ shall be destroyed," said Calvin. In discussing Ephesians 1:21-23, where Christ is said to be Lord over every power and authority, Calvin argues that "the subject of which Paul particularly speaks is the spiritual government of the Church." According to Cartwright, the church is "the foundation of the world."

The centrality of the new order in Calvinist-Puritanism has meant, as we have seen, an intense preoccupation with the life of the church. Either the civil sphere, the sphere of politics and law, is tangentially treated on the assumption that it is relatively static, something that is fixed by the Providence of God as a concession to necessity. Or, it is regarded as the instrument of the church, as far as possible to be infused with the spirit of the new order and to be motivated and directed by the hope that Christ "might be" Lord. The implication of this interpretation--one that is unavoidable throughout the writings of Calvin, Cartwright and Perkins--is that the members of the church become a 'new elite' who themselves are ultimately responsible for the proper ordering of society.

But, for the task of social ethics, is this conception adequate? Does it not do a gross injustice to the dynamic character of politics and law, and to the widely varying character of political and legal values and institutions, to treat them in such a tangential and static way? As we have hinted, the Puritans were immersed in social changes that affected not only the structure of religion, but also of economics, politics and law. Yet they had no consistent method for understanding the relation of the new order in the church to the emerging new orders of the world. There is, of course, the idea that all of life ought to be subjected to the guidance of the new community. But is not the elitist mentality fostered by such a viewpoint full of obvious pitfalls? (As we mentioned in Chapter II, this notion has disturbing similarities with some of the ideological elitism so dominant in the Anglo-American middle classes.)

The critical question, from a theological point of view, is Where in fact is the locus of order in Calvinist-Puritanism? When all is said and done, it appears to be in the 'true' members of the community. In a most complex and subtle way, the believer comes very close to being identified with God. He 'mirrors' the sovereignty of God in terms of his preferred social position. He has, more than others at least, responded to the True Order; therefore, he is able to determine True Order--not just within the church, but, finally, for all society.

Surely it is relevant to ask whether the Calvinist-Puritan is really ever able to guard himself, theologically and institutionally, from this subtle identification?

Theologically put, the redemptive order seems to have been too restricted in Calvinist-Puritanism. Perhaps that is the reason Calvinist-Puritanism provided no method for taking seriously and centrally what is going on in the 'world' outside the church. It has tended to limit Christ's redemptive authority to the church, and from there to mediate his authority to the world. But what of the changing character of 'worldly' institutions themselves? Has this, as we asked before, no significance in the evaluation of Christian action? It is possible that what needs consideration is the relation of the redemptive order to what _is happening_ to the structures of society.

One of the intentions of this essay is to show that there is an important positive (if not causal) relationship between a system of theological ideas and patterns of social action. We have tried to demonstrate that divergent systems of thought are related to divergences within patterns of action. But the task of Christian ethics is to push beyond this kind of analysis and to make evaluations of the adequacy of the relationship that is found. It is hoped that this essay will help in laying the groundwork for such evaluations.

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SUMMARY OF THESIS

In this essay we seek to contribute partial answers to two basically related questions: 1) In what way does theological language follow its own logic, independent of the conditioning factors of environment? 2) How are the ethical implications of that language related to institutionalized patterns of social action and the conceptions that underlie them?

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Interest in these questions was stimulated by Max Weber's pioneering work in sociology of religion, particularly in the Protestant Ethic and the Spirit of Capitalism, and by the wide range of critical response his studies have evoked. Weber's contention that religion represents a system of symbolic meaning and value which to some extent follows its own independent laws or 'logic,' and his contention that religion exerts one decisive influence upon the shape of social action has been the cause for much academic discussion. This is especially true of his study of Calvinistic-Puritanism in relation to the "spirit of capitalism." While support for Weber's contention is substantial and impressive, there is a general tendency to assume that Weber's conclusions, from a strictly historical point of view, demand serious modification, if not total revision. Because of this tendency it seemed in order to examine again the character and place of religion in relation to the rise of capitalism. It is our impression that with respect to the dynamics of Calvinist-Puritanism in the late 16th and early 17th centuries, Weber's approach (if not some of his particular interpretations) is eminently more satisfactory than most of the alternative interpretations.

In order to contribute an answer to the first problem, we have attempted to develop a method for analysing the 'logic' of a theological-ethical system of thought and of showing its implications for social organization. Following the lead of Kenneth Burke, we have concerned ourselves with the various aspects of the word 'order' in relation to theological discourse, and we have tried to show that attention to 'order' can illumine distinctive patterns within a theological system which have the greatest social significance.

We have employed this method in analysing Calvin's thought (Chapter I) and then in tracing the continuity between Calvin and two representative late 16th-century English Puritans, Thomas Cartwright and William Perkins (Chapter II). The results of this comparative analysis demonstrate deep similarity at the point of what we call a conception of the 'new order.' In this 'new order' there is a heavy emphasis upon voluntarism and consensuality which transcends direct political-legal coercive control. There is, in other words, a significant differentiation between the 'old order' of politics and law and the 'new order' of 'Christian liberty.' This differentiation lies at the heart of the theological as well as the social thought of Calvinist-Puritanism. What is more, there are decisive implications for economic action in the context of the 'new order' which, likewise, 'grow out of' the central symbol system.

Next, we contrast the Calvinist-Puritan 'logic of order' with that contained in the official Anglicanism of Archbishop John Whitgift and Richard Hooker (Chapter III). Both these men produced their thought in direct response to the agitation of 16th-century Puritans. Over against the pivotal notion of 'new order' in Calvinist-Puritanism, Whitgift and Hooker articulated their understanding of the 'old English order." This expressed, in effect, a conception of a legal universe in which the present and future were wedded to the past by a smooth continuity of omnicompetent law and custom. Whitgift and Hooker maintain a clear prejudice against the new. They agree that all aspects of social action should be directly controlled and regulated by the 'ancient law of the realm,' as manifested in the three interlocking political-legal authorities, the crown, Parliament and the courts.

On the basis, then, of an analysis of the intrinsic pattern or 'logic of order' within Calvinist-Puritan and official Anglican theology and ethics, we conclude that the fundamental divergence between the two groups is a 'conflict of order.' This brings us to the second central concern: the relation of theological-ethical language to institutionalized patterns and the conceptions that underlie them.

An analysis of the legal activity of any period is a particularly accurate index of the existing institutional patterns of action. If religion is related to patterns of social action, then one should expect to find a 'rich congruence' between the dominant theological discourse of a period and the legal determinations. Through an analysis of the 'legal theory' and decisions of Sir Edward Coke, the leading jurist of the time, we contend that there is just such a 'congruence' between the Puritan-Anglican 'conflict of order' and the obvious and far-reaching conflicts and tensions within the legal system itself. Particularly with respect to the law of corporations, the legal conceptions which underlay Coke's opinions and interpretations manifest the deepest and subtlest kind of affinity with the theological controversies of the late 16th century.

On the one hand, it was Coke who, in case after case, decided against the restriction of trade, against the long-existing political and economic controls, and it was he who encouraged and reflected the emergence of new values and a new conception of social order. The impulses within legal thought toward a spirit of free and autonomous economic activity, untrammeled by the traditional legal and political restraints, is related to Calvinist-Puritan agitation for new forms of action and authority.

On the other hand, it was the same Coke who tried, almost obsessively, to find a basis for these decisions in the feudal traditions of English corporation law, and to harmonize his revolutionary "Elizabethan ideas" with remnants and vestiges of medieval group life. Holding a view strikingly close to Hooker's conception of the 'old order,' Coke sought to bring all patterns of action in harmony with the "ancient law of the realm," including even the wholly novel developments in favor of 'free enterprise.' The tensions and ambiguities between these two opposing tendencies in Coke's thought became embodied in the laws of corporation at least up through the end of the 18th century.

In short, the social implications of 16th-century Puritanism and Anglicanism oppose one another, particularly in Coke's legal activity with respect to corporations. There, as in the more formal doctrinal disputes, the logics of the respective positions collide head-on in a 'conflict of order.' That conflict pits a picture of an harmonious, totally self-consistent legal universe against a dynamic conception of social change that envisions a new society living by a new law.

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